193.

SUPREME COURT OF THE UNITED STATES.

No. 76.

ALEXANDER McCALL, APPELLANT,

VERSUS

JOSIAH WATSON ET AL., HEIRS OF JOHN McIVER, DEC.

APPEAL FROM THE CIRCUIT COURT U. S. FOR THE DISTRICT OF WEST TENNESSEE.

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McCall vs. McIver's Heirs.

At a circuit court of the United States, begun and held at Nashville, and for the district of West Tennessee, on the fourth day of October, in the year of our Lord one thousand eight hundred and thirty-one, and of the independence of the United States the fifty-sixth, before the honorable John McLean, Associate Justice of the Supreme Court of the United States.

ALEXANDER McCALL, Complainant,
vs.
JOHN McIVER and JOSIAH WATSON, Defendants. } *Injunction Bill.*

Be it remembered, that, heretofore, to wit, on the 22d day of November, 1817. Alexander McCall filed his bill of complaint in this court, in the words and figures following, to wit:

To the honorable John McNairy, one of the Judges of the Circuit Court of the United States for the District of West Tennessee:

Your orator, Alexander McCall, of Smith county, in the said district, humbly complaining, showeth to your honor, your orator, that, at the last June term of the said circuit court for the district aforesaid, a certain action in ejectment, wherein John Den, lessee of John McIver and
Injunction bill. Josiah Watson, were plaintiffs, and your orator and William Kennedy, who held possession of the premises sued for only under your orator, were defendants, came on to be tried, and was tried, and a verdict of the jury was found for the plaintiffs; and a judgment was thereupon rendered in favor of said plaintiffs, and a writ of possession awarded against the tenant of the premises in question; likewise a judgment was rendered against your orator for the costs of said cause. Your orator further states, that the land recovered in said action was a certain 3,000 acres, lying on the south side of Duck river, in Maury county, bounded as follows: Beginning at a large sycamore and sugar tree on the west bank of Silver creek, being Martin Armstrong's beginning, corner of a survey of 2,000 acres, and runs thence south 800 poles, to a red oak; thence east, crossing the creek 600 poles, to a stake; thence north 800 poles, to a stake; and thence west 600 poles, to the beginning. Your orator is informed, and believes, that said John McIver and said Josiah Watson are citizens of the State of Virginia, one of the United States; and further states, that said John McIver claims title to said 3,000 acres of land under a deed from certain commissioners of bankruptcy, appointed by a court of the District of Columbia to distribute the effects of said Josiah Watson, a bankrupt, amongst his creditors; and that said Josiah Watson claims title to said 3,000 acres of land under a pretended deed from Gen. Martin Armstrong, the original grantee of said land, said to be executed by one Stokely Donelson, as attorney in fact for said Armstrong. Your orator further states
Injunction bill. that said 3,000 acres of land, recovered as above, were granted to said Martin Armstrong on the 10th day of July, 1788, by a grant from the State of North Carolina, a copy of which grant is hereto annexed, and is prayed to be made part of this, your orator's, bill of complaint.

And, on the 26th day of November, 1802, the said Martin conveyed by deed said land to your orator, and, at the same time, delivered the original grant to your orator, who has the same ready to produce to the honorable court, if required. Your orator had said deed regularly registered, and is

ready to produce the same as your honor may direct. Your orator further states, that some years before the 26th day of February, 1797, the date your orator does not now recollect, Martin Armstrong constituted and appointed said Stockly Donelson, his attorney in fact, to transact his business generally; but, before the last date above set forth, said Armstrong became suspicious of the integrity of said Donelson, and his solvency, and, on the 6th day of September, 1796, executed the power to your orator, hereto annexed marked B, which is prayed to be made a part of this, your orator's, bill of complaint; and which power, your orator is advised, contains a revocation of all power and authority previously conferred on said Donelson by said Armstrong. Shortly after this revocation, Donelson proceeded from North Carolina to Alexandria, then in the State of Virginia, with full knowledge that he had no authority to complete any sales of the property of said Armstrong, and that, as your orator is advised, a negotiation was opened by Donelson with Josiah Watson, who is prayed to be made a defendant to this bill, for the sale of an immense quantity of the lands of said Armstrong, lying in the State of Tennessee, to said Watson; and which negotiation were continued until the 26th of February, 1797, on which day said Donelson executed a deed for upwards of thirty thousand acres of land belonging to said Armstrong. Your orator states that, whilst said Donelson was at Alexandria, he addressed a letter to said Donelson at Alexandria, transmitted the same by mail from Salem, in North Carolina, and your orator believes that said letter was received by said Donelson, in which your orator stated to said Donelson that Martin Armstrong had revoked all his, said Donelson's, power to act for him; that he had acknowledged said revocation in the county court of Stokes county, in open court.

Injunction bill.

Your orator expressly charges that said letter was received by said Donelson before the 26th day of February, 1797; that the same was seen by said Donelson and Watson, and that it was agreed on between them that Donelson should execute the deed, which he did, but that Donelson should return to North Carolina, and extract from said Armstrong a power to complete the sales which he had commenced. Accordingly, said Donelson, shortly after the execution of the deed to Watson, returned to North Carolina, and soon made application to Martin Armstrong, alleging to him that he had opened the way for sales of lands to be effected, but that he could get no money until he received authority from Armstrong. In proof of these allegations, your orator presents here an extract of a letter from said Donelson to said Armstrong, dated the 8th of April, 1797, and immediately after said Donelson's return from Alexandria, and 42 days after the execution of the deed of 26th February, 1797, the original letter being in your orator's possession, and ready to be produced when and where your honor may require. The extract is in the following words: "I have made sales of some of your lands * * * * * but *no payments can be had* 'till I see you, and get a further writing and authority from you, or if you will write it, and send it forward to me, such as you thing proper will do, so as to authorize me to complete the sales. As yet, you have given me no authority sufficient for me to act, and do every thing for the completion of the sales, but want further advice from you." To which application contained in said extract and original letter, the said Armstrong gave a direct and positive refusal; and of which refusal, your orator charges the said Watson had immediate notice. Your orator charges that, notwithstanding the execution of

the deed of the 26th of February, 1797, by Donelson to Watson, no money or valuable thing, or consideration, was paid by said Watson for the immense property attempted to be conveyed by said deed, either to said Donelson or said Martin Armstrong; but the said Watson artfully contrived, in combination with the said Donelson, to procure the execution of said deed, and urged said Donelson to procure the sanction of Armstrong thereto, and promised them to make payments for said lands, but, in consequence of the refusal of said Armstrong to authorize said Donelson to complete the sales attempted to be effected, said Watson would pay nothing of the purchase money of said lands, and in this situation things remained until said Watson became unable to pay any part of the purchase money of said lands by reason of his insolvency; and your orator charges that, by reason of the fraudulent practices of said Donelson, which were aided and abetted by the said Watson, an immense property was attempted to be procured without any consideration being paid whatever, and with a full understanding, on the part of said Donelson, that he had no power to sell the property of said Armstrong; and, also, with a full knowledge and belief on the part of said Watson, that all power on the part of said Donelson to complete the sale attempted to be made, had been recalled, and had ceased to exist. Your orator further charges that, so well was the said Watson satisfied that an acquiescence on the part of said Armstrong was necessary to a ratification of the acts of said Donelson above set forth, that he did not retain the power under which Donelson pretended to act, nor did he require any registration of the same, nor was there any registration of the same any where, nor any probate of the same before any court whatever.

Injunction bill.

Your orator further charges that, on the insolvency of said Watson being ascertained, the said John McIver, who is likewise prayed to be made a defendant to this bill, became interested in the said lands attempted to be sold by Donelson to said Watson between the years 1800 and 1803, and received the title, under which he is pretending to hold the land in question, from the commissioners of bankrupcy aforesaid, with a full knowledge of the facts above set forth; and, the said McIver particularly knew that no consideration had been paid for said lands, or any part, and knew that all advances of the purchase money had been withheld by said Watson, under pretext that the acquiescence of said Armstrong, as aforesaid should be obtained, and knew that neither Donelson nor Armstrong had received any of the purchase money of said land, and that not long after the execution of the said deed of 26th February, 1797, Watson became embarrassed, and not long thereafter became totally insolvent; and said McIver knew that Donelson returned to North Carolina, shortly after the execution of said deed last mentioned, for the purposes, and with the views above set forth.

Injunction bill.

Whereupon, all the premises being seen, and your orator being remediless in a court of law, and can only obtain redress in a court of equity, where matters of fraud are properly cognizable, your orator prays your honor to grant him subpœnas directed to the said defendants, and that they may true, distinct, and perfect answer make to all and singular the matters and things above set forth; and that said Watson may set forth the terms, conditions, stipulations, times of payment, &c. &c. of said contract for said large quantity of lands, and whether he paid any thing therefor, and, if any thing, what, and to whom, and when; and that said McIver may set forth whether he did not know all the facts and statements as above set, at, before, and after he received the conveyance or conveyances under which he

claimed the land and premises in question; and your orator further states, that said Josiah Watson and John McIver are about, or soon will, issue out a writ *habere facias possessionem*, by virtue of said judgment in the said circuit court of the United States for the district of West Tennessee, unless enjoined by your honor from so doing, which your orator prays your honor so to do; and further prays that, by a decree of your honorable court, the said Josiah Watson and John McIver may be perpetually enjoined from doing any thing on said judgment, or by virtue thereof, in said court, or taking possession of said land and premises, and that the clerk of said court may be enjoined from issuing said writ of possession, or that, if issued, the marshal of said district may be enjoined from executing the same; and further, that by a decreee of the honorable court aforesaid, all right and title to, or interested in said land and premises, may be divested out of said Watson and McIver, and vested in your orator; and your orator further prays your honor to grant a perpetual injunction against all writ or writs of *fieri facias*, or other process which may have issued for the costs of said cause; and your orator further represents that a process is now in the hands of the deputy marshal of said district, commanding him to levy the costs aforesaid off the property of your orator, and the said marshal is about to levy the same, and make the said costs, and will make them forthwith, unless he is enjoined from proceeding under said process, from said circuit court; and your orator prays the honorable court to grant to him such other and further relief as the nature of his case may seem mete.

Injunction bill.

GRUNDY & BALCH, *Solicitors.*

On the 22d day of November, 1817, Alexander McCall, the complainant in the foregoing bill of complaint, came before me, and made oath that the matters and things set forth in the said bill of complaint, as of his own knowledge, are true; and that those which are set forth as not of his own knowledge, he believes to be true.

Complainant's affidavit to bill.

ALEXANDER McCALL.

Sworn to, and subscribed before me.

JOHN McNAIRY, *District Judge.*

Let writs of injunction and subpœna issue agreeably to the prayer of the foregoing bill, upon the complainant giving security for the costs.

Order for injunction and subpœna.

JOHN McNAIRY, *District Judge.*

(Exhibit A.)

STATE OF NORTH CAROLINA:

No. 32. Know ye, that we have granted Martin Armstrong a tract of land containing three thousand acres of land, lying in our middle district, on the south side of Duck river, near the head of Sinking creek, beginning at a large sycamore and sugar tree on the west bank of the creek, being Martin Armstrong's beginning, corner of a survey of two thousand acres, No. 1117, running thence south 800 poles, to a red oak; thence east crossing the creek 600 poles, to a stake; thence north 800 poles, to a stake; thence to the

beginning; to hold to the said Martin Armstrong, his heirs and assigns, forever: dated the 10th day of July, 1788.

SAM'L JOHNSTON.

J. GLASGOW, *Secretary.*

A true copy:

WM. HILL, *Secretary.*

Warrant 1,116—surveyed by D. McKee—Mark Robison and Will Ross, chain-carriers.

Grant.

It is hereby certified that the above is a true copy from the books in my office containing copies of John Armstrong's grants, certified by W. Hill, secretary of North Carolina, and recognized by an act of the Legislature of the State of Tennessee.

Given under my hand at office, in Nashville, this 5th day of November, 1831.

JNO. C. McLEMORE.

Deed from M. Armstrong to Alex. McCall.

This indenture made this 26th day of November, in the year of our Lord 1802, between Martin Armstrong, sen'r, of Davidson county, and State of Tennessee, of the one part, and Alexander McCall, of the county of Stokes, and State of North Carolina, of the other part, witnesseth: That the said Martin Armstrong, for, and in consideration of the sum of $3000 dollars, to him in hand paid by the said Alexander McCall, the receipt whereof is hereby acknowledged, hath given, granted, bargained, and sold, aliened, conveyed, and confirmed, unto the said Alexander McCall, his heirs and assigns, for ever, a certain tract or parcel of land, situate, lying, and being, in the State of Tennessee, in the middle district, on the south side of Duck river, near the head of Stinking creek, beginning on a large sycamore and sugar-tree, on the west bank of the creek, being Martin Armstrong's beginning, corner of a survey of two thousand acres, No. 1117, running thence south 800 poles to a red oak; thence east, crossing the creek, 600 poles, to a stake; thence north 800 poles, to a stake; thence west to the beginning, containing the whole 3000 acres.

To have and to hold the aforesaid land, with all and singular the rights, profits, emoluments, hereditaments, and appurtenances, of, in, and to the same belonging, or in any wise appertaining, to the only proper use and behoof of him, the said Alexander McCall, his heirs and assigns, for ever. And the said Martin Armstrong, for himself, his heirs, executors, and administrators, doth covenant and agree to and with the said Alexander McCall, his heirs or assigns, that the before recited land, and bargained premises, he will warrant and for ever defend against the right, title, interest, or claim, of all and every person or persons whatsoever.

In witness whereof, the said Martin Armstrong hath hereunto set his hand, and affixed his seal, the day and year above written.

MARTIN ARMSTRONG, [SEAL.]

Signed, sealed, and delivered in presence of

WM. HUGHTELL.

STATE OF TENNESSEE, *sct.*

Deccember 11*th*, 1802.

Probate. This day William Hughtell, a subscribing witness to the within instrument of writing, personally appeared before me, David Campbell, one of the judges of law and equity for the State aforesaid, and, being duly sworn, said he saw Martin Armstrong execute the within instrument of writing in due form of law.

Let it be registered.

DAVID CAMPBELL.

STATE OF TENNESSEE, *Davidson County.*

Registration. In book G, page 104, the within deed of conveyance and probate is duly registered, this 12th day of February, 1807.

NATHAN EWING, *Register.*

STATE OF TENNESSEE, *Miro District.* } *November term*, 1808.

Probate. This indenture, of bargain and sale, between Martin Armstrong, of the one part, and Alexander McCall, of the other part, was proven in open court by the oath of William Hughtell, one of the subscribing witnesses thereto. And Redmond D. Barry appeared in open court, and, being duly sworn, saith that he is acquainted with the handwriting of James Irwin, the other subscribing witness to the said indenture; and that he believes that the signature of the said James Irwin is in his own proper handwriting, and that the said James Irwin is now, as has been informed, in the Mississippi Territory.

Test: R. McGAVOCK, *Clerk.*

STATE OF TENNESSEE, *Maury County.*

Registration. I, William W. Thompson, register of said county, do certify that the within deed of conveyance is duly registered in my office, in book A, page 140.

W. W. THOMPSON, *Register.*

December 12*th*, 1808.

Know all men by these presents, that I, Martin Armstrong, senior, of Stokes county, in the State of North Carolina, for good and lawful reasons, me thereunto moving, do hereby nominate, constitute, and appoint my trusty friend, Alexander McCall, of the county and State aforesaid, my true and lawful attorney, for me, and in my name, to transfer all the right, title, interest, or claim, of me, my heirs, &c., in and to the several tracts or parcels of land hereafter set forth and described; and, agreeable to his private instructions, to convey the said tracts to any person or persons, inclined to purchase, in as full and ample manner, to all intents and purposes, as I, myself, could do were I personally present; to wit: One tract, containing 9600 acres, granted to Martin Armstrong and Stockly Donelson, in several tracts, lying and joining each other, on the west fork of Obid's river, a south branch of Cumberland river; one tract, granted to myself only, of 3840, situated on the main fork of Obid's river, near the aforesaid tract; also, a tract of 640 acres, granted to Mr. Joseph Cason; and one tract of 5000 acres, on Elk

Power of attorney from Martin Armstrong to Alexander McCall.

river, the waters of Tennessee: all of said tracts granted by the State aforesaid by virtue of military warrants and military service rights. Also, 20,000 acres of lands, situate on the rivers Holston, Clinch, and Tennessee, granted in partnership by the said state to the said Martin Armstrong and Stockly Donelson, in different grants; all lying in the eastern district, on the east side of Cumberland mountain, known by the name of the Eastern District, of which the said Stockly Donelson is appointed general surveyor. And I do further authorize and empower him, my said attorney, to employ one or more attorneys under him, if needed, for the more effectually performing every matter or thing that shall be neecessary concerning the premises. And I do hereby revoke, annul, and make void, all powers or authorities, if any, by me heretofore given to any person or persons for the purpose of making sales or any conveyance of any lands granted myself alone, or in partnership; hereby constituting him, the said Alex'r McCall, my only attorney in and for the purpose aforesaid: hereby ratifying and confirming whatsoever he shall or may lawfully do in or concerning the premises.

In testimony whereof, I have hereunto set my hand and affixed my seal, this 6th day of September, in the year of our Lord one thousand seven hundred and ninety-six.

MARTIN ARMSTRONG, [SEAL.]

Signed, sealed, and delivered in the presence of,
WM. HUGHTELL,
MARTIN ARMSTRONG.

STATE OF NORTH CAROLINA, *Stokes county, sct.* } *September term*, 1796.

I, Robert Williams, clerk of the county court of Stokes aforesaid, do hereby certify that the execution of the within power of attorney was duly proved, in open court, by the oath of William Hughtell, one of the subscribing witnesses thereto, and ordered to be recorded on the minutes; which is accordingly done.

In testimony whereof, I do hereunto set my hand, and have affixed [SEAL.] the seal of the said county to the same, this 8th day of September, A. D. 1796.

RO. WILLIAMS, *Clerk*.

STOKES COUNTY, *sct*.

I, Jacob Blum, presiding magistrate in the court held for the county aforesaid, do hereby certify that the above subscribing, Ro. Williams, is the clerk of the said county court; and that due faith and credit ought to be given to his attestation, as such, in any of the courts within the United States.

Given under my hand and seal, this 8th day of Septemher, A. D. 1796.

JACOB BLUM, *J. P.* [SEAL.]

Know ye, that, by certain letters, and letters of attorney, heretofore received from General Martin Armstrong, under which sundry business and conveyances have been done and made by me, by the authority aforesaid, that a further letter of attorney from the said Armstrong, bearing date sometime in January last, confirming all and every matter or thing that has been done by me, by virtue of the said letters and powers of attorney heretofore wrote

Release from Donelson to Armstrong.

and made; and that the said Gen. M. Armstrong is now desirous that I should not act under any of the powers heretofore given, after this date; that all and every matter which has heretofore been done under the said letters and powers aforesaid, shall be good and valid in law and equity as if I, the said Armstrong, had personally done the same myself. Know ye, that I, the said Donelson, do hereby agree to accede from acting, for the future, under any of the said authorities, unless further advised and authorized by the said Gen. Martin Armstrong. Done at Raleigh, this 17th March, 1796.

STOCKLY DONELSON.
17*th March*, 1796.

Test: WILLIAM TYRELL,
M. HARDIN.

Be it known, that no act or acts done by me since the last power mentioned, in January last, shall have power, force, or effect, against either party mentioned in said power or articles, that has been done since the sig-signature of the same, by myself, or from any person for me.

SLOCKLY DONELSON.

Test: WM. TYRELL,
M. HARDIN.

NASHVILLE, *August 28th*, 1822.

We have this day examined the original instrument, of which this is a true copy. We are acquainted with Stockly Donelson and William Tyrell's handwriting, and believe the original to be in their own proper handwriting.

THO. CRUTCHER,
WILL. LYTLE.

RALEIGH, 8*th April*, 1797.

Letter form Stockly Donelson to Martin Armstrong.

DEAR SIR: I received your letter by Captain Thomas Smith. I am sorry it is so entirely out of my power to comply with your request in paying him a sum of money so large on demand; and, unless thereof, as our dealings have been so extensive, and the effects against that bond that Mr. Smith claims under, I am certain is paid up, forbids my making any further payments, till you and myself comes to an agreement of our accounts. I have made sale of some of your land, but no payments can be had till I see you, and get a further writing and authority from you; or, if you will write it and send it forward to me, such as you think proper will do, so as to authorize me to complete the sales you have given me nothing, not a cent, for me to act and do every thing towards the completion of the sales; but want further advice from you. I want very much to see you. I have contracts open to any amount of land that you wish to dispose of. I am now in haste. Will write you more fully by the next opportunity.

Am, with esteem, yr. mo. obt. servt.
STOCKLY DONELSON.

Gen. MARTIN ARMSTRONG.

[The blanks are left on account of the original not being plain—worn out.]

And the said defendants, by protestation not confessing to be true all or any of the matters in said bill stated, in manner and form as therein set forth, do demur to the same, and say that the matters therein charged are not good and sufficient in law to enable this honorable court to make any decree thereon against these defendants: wherefore, and because said bill and the matters therein are not good and sufficient, they pray judgment of said bill, and that the same may be dismissed; and, for causes of demurrer, show the following:

1st. The matters therein alleged, are matters properly triable at law, and not in this court.

2d. It is not showed that said complainant has any equitable title to said land, whereby to enable this court to make any decree thereon.

3d. It is not showed that said complainant paid any valuable consideration, whereby to make his claim available in this court.

TRIMBLE.

The reason why the demurrer was not made a part of the record, that, from a particular and minute examination of all the dockets, I have not been able to find where the dumurrer was filed, nor in what way it was disposed of. It is now inserted at the instance of George W. Campbell, esq., who is one of the attorneys for McIver and Watson.

In testimony whereof, &c. I have made this statement.

N. A. McNAIRY, *Clerk.*

January 2d, 1832.

And on the 2d day of July, of the June term, 1819, on application of said complainant, by his counsel, leave is granted him to amend his said bill, on payment of the costs of such amendment.

And on the second day of July, 1819, the complainant, by his counsel, comes and files his amended bill, which is in the words and figures following, to wit:

The amended bill of Alexander McCall, complainant, against Josiah Watson and John McIver, defendants.

And your orator further represents to your honors that, for the land aforesaid, that, when the purchase thereof was made from the said Martin Armstrong, your orator paid a full and valuable consideration in land, amounting in value to the sum of between two and three thousand dollars; said land lying on Obed's river, and was conveyed to Daniel Wheaton for the benefit of Martin Armstrong; and, when he so purchased, did not know of any claim thereto other than that of said Armstrong, nor does he believe said Armstromg knew of any other. And your orator further represents, that, when the title to this land was in controversy in the court of law, your orator was unable, and still is unable to prove in a court of law, the knowledge of the fact, on the part of said Watson and McIver, that the said Donelson had no power to sell said land, his power being revoked; nor could your orator prove in said court that said Watson never paid any consideration for the land in controversy; and although he believes the said facts himself, for want of proof that could be compelled in a court of law, he is constrained to apply to your honorable court, sitting as a court of equity, that the said Watson and McIver may, on their corporal oaths, true answers make to the foregoing facts and charges, and make full discovery of all their knowledge of the foregoing matters and things; and, particularly, whe-

ther said Watson ever paid any thing for said land; and whether he did not forbear to pay any thing till said Donelson should get a full power to convey to him, said Watson; and whether he did subsequently, become insolvent and totally unable to pay; and whether he did not know that said Donelson's power to sell the land aforesaid, was not known to him, said Watson, before the 26th day of February, 1797.

Alexander McCall apeared in open court, and made oath that the facts stated in the foregoing amended bill, as of his own knowledge, are true; and those stated as not of his own knowledge, he believes to be true. July 2d, 18 9.

ALEX'R McCALL.

ROBT. SEARCY, *Clerk.*

And at June term, 1823, on motion of the complainant, by his attorney, he is allowed to file an amendment to the original bill of complainant in this cause, subject to the payment of costs of such amendment; which amended bill is the words and figures following, to wit:

The amended bill of Alexander McCall to his original bill, filed in the circuit court of the United States for the 7th circuit and district of West Tennessee, against Josiah Watson and John McIver.

Your orator would humbly represent to your honors that, since filing his original bill, he hath discovered, and so expressly charges, that the said Josiah Watson had purchased from the said Stockly Donelson a large quantity of lands exclusive of, and previous to, the conveyance of the 6th February, 1797, mentioned in the original bill; and the said Donelson had conveyed, or attempted to convey, many of said lands, as attorney in fact of Anthony Hart, Willowby Williams, and perhaps some others, when he possessed no such authority; and the said Watson, discovering those defects of title, and believing that Donelson was in failing circumstances, the said Watson RECEIVED said deed without the production of any power; or, if any was produced, it was a special power which had been long before revoked, but said Donelson promised to procure a power from Armstrong, or a ratification of the conveyance. The said Watson believing that he could not be placed in a worse situation by taking a conveyance, did agree to receive said conveyance to cover any losses which he might sustain by the loss of said lands previously conveyed; and that said Watson wrote many letters urging Donaldson to procure the power, and to complete his title; which letters were answered by said Donaldson, and now in the possession of said Watson, and which letters are not within the power of your orator. Said Donaldson not being able to procure the power or ratification from said Armstrong, the said John McIver, a number of years thereafter, perhaps about 1812, hunted up and got possession of an old general power that had been revoked long before the said conveyance was made, and which was got out of an old trunk of useless papers of a certain Will. Terryll, by a certain Thomas Dillon, in whose hands they had fallen, and procured by said John McIver, and fraudulently registered, and proved it, with full knowledge that it had been revoked; with a full knowledge that it was not the authority upon which the conveyance was pretended to be made, and with a full knowledge that neither Donaldson nor Armstrong had received one cent for the lands described in said deed, and now sets up the same to defeat your orator's title.

2d amended bill.

Your orator further charges, that said deed of the 6th February, 1797, was received by said Watson conditionally; that, in the event said power was not procured by said Donelson, or if the title turned out defective, said Donaldson was to convey other lands in lieu thereof.

Your orator further represents, that the said Watson kept books in which entries were made of all the dealings between said Donelson and himself, and, also, letter books in which all his letters were recorded, and said books are in the possession of the said Watson or McIver, and not in the power of your orator.

Your orator charges, that said Watson made out his answer to the original bill, which was duly sworn to and placed in the office of the clerk of this court, where it remained for some time, not being marked as filed; which was afterwards withdrawn, and another put in, less favorable to the claim of your orator than the first, in many material respects, as he is advised and believes.

Your orator prays that the said John McIver and Josiah Watson be made defendants to this amended bill and make answer thereto, in as full and complete manner, upon their corporal oaths, as if the same were herein again repeated, and they thereunto particularly interrogated; and that he particularly answer and set forth copies of all the entries made in said Watson's book touching land purchases, the quantity purchased, when, and for what price; copies of all the entries of moneys paid or goods advanced said Donelson in consideration of lands, when paid; that they set forth and exhibit copies of all the letters written by said Watson to said Donaldson upon the subject of their land business; and that they produce all the letters written by said Donelson, addressed to said Watson upon that subject; that they exhibit the whole amount of acres purchased from Donelson, by producing the deeds or copies thereof, and state the whole amount of consideration paid, and the price of each acre agreed upon; that they state the time when, and place where, the deed of 9th February, 1797, was executed; that they state the reason why the answer of Watson, first filed to the original bill, was withdrawn; and that they produce the same to this court.

Your orator prays subpœnas to answer, &c., and that he may have such decree as is prayed for in his original bill; and he, as in duty bound, will ever pray, &c.

UNITED STATES OF AMERICA, *District of West Tennessee.* } *June term*, 1823.

This day appeared, in open court, Alexander McCall, and made oath that the contents of the foregoing bill, as stated of his own knowledge, are true; and those stated as not of his own knowledge, he believes to be true.

ALEXANDER McCALL.

Sworn to, and subscribed, this 20th June, 1823.

Test:

N. A. McNAIRY, *Clk.*

And the said defendants at September rules, holden in the clerk's office for 1820, the defendants come and file their separate answers in the words and figures, to wit:

Answer of John McIver.

To the honorable the Judges of the Circuit Court of the United States for the District of West Tennessee, sitting in Chancery:

The answer of John McIver, assignee of the estate and effects of Josiah Watson, a bankrupt, to the bill of complaint exhibited against him and the said Watson, in said court, by Alexander McCall, respectfully showeth:

This defendant, saving and reserving to himself all manner of advantage and benefit of exception to the many uncertainties, untruths, and misstatements in said bill contained, for answer thereto, or to so much thereof as this defendant is advised it is material to him to answer unto, he answereth and saith: he admits that a suit in ejectment was, some years since, instituted in this honorable court, on the law side, in the name of this defendant and said Watson's lessee, against a certain William Kennedy, for the recovery of the tract of land containing 3,000 acres mentioned in said complainant's bill, or so much thereof as was held in possession by said Kennedy, in which suit, as defendant believes, said complainant was admitted to defend jointly with said Kennedy; and that at the June term, 1817, of said court, said cause came on to be tried, and a verdict of the jury was found in favor of this defendant and said Watson's lessee, against complainant and said Kennedy, and a judgment was thereupon rendered in favor of said lessee against said complainant and said Kennedy. He also admits that a writ of possession was awarded against the tenant in possession, and that a judgment was rendered against said complainant for the costs of said cause.

Answer of John McIver.

Defendant, further answering, shows, that he claims title to the land in question, as assignee of the estate and effects of Josiah Watson, a bankrupt, under and by virtue of a deed from the commissioners of bankruptcy in the case of said Watson to this defendant, made and executed on the 9th day of July, 1803, conveying to this defendant the said tract, amongst others, as part of said Watson's estate, for the general benefit of said Watson's creditors, or such of them as had sought, or should, in time to come, seek relief under the commission of bankruptcy sued out and prosecuted against said Watson; which deed, duly authenticated and registered in the county of Maury, where the land lies, this defendant has ready to produce as your honors may direct.

Defendant further saith, that the tract in question, amongst others, was included in the schedule surrendered, and given in upon oath, by said Watson, before the commissioners of bankruptcy, as forming part of his estate; and the evidence of said Watson's title to said land is a deed to him from Stockly Donelson, attorney in fact for Martin Armstrong, for upwards of 30,000 acres of land, the tract in question included, bearing date the 26th day of February, 1797, which deed, duly proven and authenticated, and registered in Davidson county on the 2d May, 1798, together with the power of attorney from said Armstrong authorizing said Donelson to make said conveyance, bearing date the 2d June, 1790, duly proven and authenticated, and registered in Maury and other counties, this defendant has ready to produce as this honorable court may direct.

This defendant had no knowledge of any of the transactions or dealings between said Watson and Donelson at the time they took place, nor did he know any thing of Watson's business, except from common report, until the summer of 1803, when the affairs of said Watson were placed under the direction of this defendant, as assignee of said Watson's estate. This defendant never saw Donelson, that he knows of, until the summer of 1798, at which time he first became acquainted with him at Knoxville.

Answer of John McIver.

As to the consideration paid by Watson to Donelson for said land, this defendant had no knowledge, and refers to the answer of Watson as to that point, which this defendant believes will show that Watson not only paid Donelson the full consideration for said land, but would have enforced a heavy claim against him for a failure in complying with other contracts, had there been any prospect of Donelson's being able to pay. This statement he has always heard the said Watson make, not only in conference with himself, but at several meetings of his creditors. As to the authority of Donelson to make the conveyance for said lands, this defendant knows nothing, except what he has derived from *from* the power of attorney hereinbefore mentioned, which this defendant is advised was amply sufficient to authorize Donelson to make said conveyance; and this defendant has been repeatedly informed by said Watson that, when he made said purchase and accepted of said conveyance, he considered Donelson fully authorized to make the same; and that, so far from his knowing or having any information of the pretended revocation alleged by complainant, said Watson believed Donelson to stand high in the confidence of Armstrong; and, if Watson did not then require the possession of said power of attorney, he believes it resulted from the high confidence he reposed in Donelson, and, as said Watson has informed this defendant, that he relied implicitly on the assurance of Donelson to have said power duly registered in the proper office in this *country*.

Answer of John McIver.

This defendant does not know, and cannot admit, that Donelson had any notice of the pretended revocation alleged by the complainant, and therefore requires proof of the same; neither does he know that Watson had any knowledge or notice thereof, nor any reason to suppose that said power had been in any manner revoked by Armstrong. Defendant further states, that complainant in, his defence at law, relied on the same grounds which he makes this foundation of his bill, and obtained a continuance of the action on the law side of the court, to procure his testimony to show that said power to said Donelson had been revoked by said Armstrong; and, on the trial at a subsequent term, when complainant admitted that he had procured all the evidence that existed, to show that said power had been revoked, and produced it to the court, the judges of said court were of opinion, and so decided, that there was no evidence of the revocation of the power under which said sale and conveyance were made to said Watson, which opinion was submitted to without any exception or objection; therefore, this defendant insists on the decision of the court on the law side as a bar to their examination of the same question in this court on the equity side, and claims the benefit of the verdict and judgment rendered by said court on the law side in bar of the relief sought by said bill. Defendant, further answering, states that he is advised that complainant can have no claim, either in law or in equity, to the lands in question, inasmuch as said Watson, for a valuable consideration, purchased said land, and received a conveyance for the same from the authorized agent and attorney in fact of said Armstrong, who was fully and legally empowered to make said sale and conveyance, and whose character as such was then, and for many years before, publicly known and recognized; and this sale and conveyance to Watson having been so made upwards of five years prior to the date of the alleged conveyance from Armstrong to complainant; and, furthermore, said conveyance to Watson having been registered in David-

Answer of John McIver.

son county, in the month of May, 1798, at which time, and for several years afterwards, as defendant has been informed, said Armstrong had his residence in the town of Nashville, this defendant insists that said registration was full and sufficient notice to said Armstrong as well as to said complainant. This defendant further saith, that he has been informed, and expects to be able to prove, should it be necessary, that personal notice of said deed so made by Donelson as attorney in fact for Armstrong, was given to Armstrong as early as the month of April, 1798, by a certain Robert Casey, who then acted as agent for said Watson, at which time said deed was submitted to the perusal and examination of said Armstrong.

Defendant, further answering, states that, subsequent to the verdict and judgment in favor of this defendant, and said Watson's lessee, against said complainant and Kennedy, for said lands, which this defendant considered to be conclusive against complainant, but prior to the institution of the present suit, this defendant, in pursuance of a contract previously made, and for a valuable consideration to him paid, has made conveyance of said tract, amongst others, unto John Childress, late of Davidson county, now deceased, and holds the said money to be distributed amongst the creditors of said Watson, which this defendant prays he may be permitted to have done. This defendant thinks of nothing further material for him to answer unto. He denies all fraud and combination so unjustly imputed to him, and prays to be hence dismissed with his reasonable costs, &c.

JNO. McIVER.

STATE OF TENNESSEE, *Davidson County:*

Answer of John McIver. Personally appeared before me, Wilkins Tannehill, justice of the peace for said county, John McIver, the respondent in the above answer in chancery, who made oath that the several matters and things therein set forth, which are stated to be of his own knowledge, are true; and such as are derived from the knowledge or information of others, he believes to be true.

Sworn to, and subscribed before me, this fifth day of August, 1820.

W. TANNEHILL, *Justice of the Peace.*

Answer of Josiah Watson. The answer of Josiah Watson to the bill of complaint exhibited against this defendant and John McIver, by Alexander McCall, before the judges of the court of the United States for the seventh circuit, at Nashville.

This defendant, saving to himself all advantage of exception to the many uncertainties, imperfections, and untruths, in said bill contained, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, answereth and saith, that, in the early part of the year 1797, perhaps in February, as well as his recollection serves him, not having seen the original title papers for a long time past, he was applied to by Stockly Donelson to purchase a quantity of land in the State Tennessee: amongst the land which he proposed to sell and convey, a considerable quantity was granted to Martin Armstrong. Said Donelson affirmed to this defendant that he had complete authority to sell and convey the same as said Armstrong's agent, which assertion this defendant relied on, and thinks the said Donelson produced Armstrong's power of attorney, in consequence of which

Answer of Josiah Watson. this defendant did purchase from him the quantity of about 35,000 acres, and received a conveyance for the same.

This defendant at that time, and ever afterwards, believed said Donelson to be authorized to sell and convey said lands, and if he had not believed it at the time, he would not have purchased the same; and he most positively denies that he had any knowledge or had ever heard that said power of attorney from Armstrong to Donelson, was, in any measure, revoked or recalled, or that Armstrong had given other power to any person else for a long time after the purchase by him; and he says that if he had received any such notice or information, he would have declined making said purchase, and that he had not the least reason to suspect any defect in the title he was acquiring. As well as this defendant recollects, the price for said lands sold in February, 1797, to him, was between 25 and 33 cents per acre. This defendant saith that, at this late period, after a lapse of so many years, he cannot state with any precision the various sums of money paid by him to Stockly Donelson; but he knows certainly and positively that he paid to the said Donelson, at different times, more money and goods than the purchase which that land amounted to, and has no doubt, and does verily believe, that the whole amount for that particular purchase has been satisfied to the said Donelson, as the attorney of the said Armstrong; and this defendant is the more confirmed in this belief from a reference which he has had to a copy of the deed which the said Donelson made him as the attorney of the said Armstrong. That deed states that the consideration for the said land had been paid by this defendant, and he expects that the said deed was intended to express the real truth of the case, and to serve the purpose as well of a title to this defendant, as an evidence of his payment for the land, and this defendant believes there was no other agreement made. This defendant saith that *that* he had made other purchases of land from the said Stockly Donelson, and, in several instances, the said Donelson failed to comply with his contracts in making conveyances, by which this defendant was considerably injured, and should have sued the said Donelson for damages if he had not failed in his circumstances.

Answer of Jos. Watson.

This defendant supposes said tract of 3,000 acres to be part of those lands conveyed to him in February, 1797, and for which Donelson received compensation as hereinbefore stated; but this defendant insists that said complainant has no equity against defendant, or any person claiming under him as his creditors or otherwise.

This defendant denies all fraud and unlawful combination, and prays that the complainant's bill may be dismissed; and that he, this defendant, may be hence dismissed, with reasonable costs.

JOSIAH WATSON.

DISTRICT OF COLUMBIA, *to wit:*

On the first day of June, 1820, the above named Josiah Watson made oath before me, in due form of law, that the facts stated in the foregoing answer, so far as they are stated of his own knowledge, are true; and that, so far as they are stated of the knowledge of any other person, he believes them to be true.

W. CRANCH, *Chief Judge of the Circuit Court for the District of Columbia.*

DISTRICT OF COLUMBIA, *to wit:*

I, Will. Cranch, Chief Judge of the United States' circuit court for the District of Columbia, do hereby certify that the foregoing answer of Josiah

Watson was sworn to in due form of law by said respondent, that the same was sealed up in my presence.

[*No name to the original.*]

And the defendant, Josiah Watson, on the first day of June, 1824, at the clerk's office, comes and files his separate answer to the amended bill of the complainant, which is in the words and figures following, to wit:

Amended answer of Jos. Watson.

To all to whom these presents shall come, greeting:

I certify that Wm. Waters, whose name is subscribed to the annexed instrument of writing, is and was at the time of signing the same, a justice of the peace for Washington county, in the District of Columbia, and that full faith is due to all his acts as such.

In testimony whereof, I, John Quincy Adams, Secretary of State of the United States, have hereunto subscribed my name, and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this first day of April, A. D. 1824, and of the independence of the United States of America the 48th.

J. Q. ADAMS.

The answer of Josiah Watson to the amended bill of complaint of Alexander McCall, filed against this respondent and others in the circuit court of the United States for West Tennessee.

This respondent, reserving to himself all manner of exception to the uncertainties and untruths in the said amendment to the bill of complaint contained, for answer to so much thereof as he deems it material to answer unto, and which is not already answered by this respondent in his answer to the original bill, this respondent answers and says, that it is true he did purchase from Stockly Donelson, as attorney in fact for Martin Armstrong, the land in controversy, with other lands, as set forth in the answer to the original bill, a copy of which he has now present, and which answer is referred to.

Amended answer of Jos. Watson.

At the time this respondent purchased said lands from said *Stockly*, he did believe that the said Donelson was fully authorized to sell for Martin Armstrong, and he paid said Donelson for said lands a full and fair price in goods and money, according to the different purchases from said Donelson, and then, as this respondent believes, said Donelson remained in his debt.

The charge in the bill, that the said lands were taken from Donelson because he was in failing circumstances, this respondent does not admit to be true, and would again repeat in contradiction to that charge in the bill, that he paid said Donelson a full and fair price in goods and money for said land, and hopes that said complainant may be held to strict proof of said allegation.

But that part of the allegation, that they were taken with a knowledge and belief, on the part of this respondent, that Donelson had no power, and that, if he had, it was revoked, &c. is wholly untrue.

Amended answer of Jos. Watson.

The allegation that said Watson wrote many letters to said Donelson, urging of him to complete the title, &c. This respondent may have written Donelson to complete his contracts, but does not believe that he wrote to him respecting the tract referred to in this answer, he (respondent) having a full and complete con

veyance to said tract. He also denies having in his possession any letters from said Donelson promising to get a ratification of said powers, nor does he recollect that he ever had possession of such letters. If any such letter or letters were written to him, he does not now remember it. How said John McIver got said power of attorney, this respondent has no knowledge.

This respondent denies that he had, or now has, any knowledge that said power was, or ever has been, revoked. Respondent denies that he received, conditionally, the deed of 1797 from Stockly Donelson, as alleged in the bill, and says the lands which Donelson sold to him, and alluded to in the bill, were sold to him absolutely

This respondent admits that he did keep books of account, and books wherein the letters written by him upon business were, in part, copied; but all of said books, for many years, been out of his possession, nor has he any recollection of their contents. But he believes, if the accounts are truly stated therein, that the said Donelson appears from said books to be largely in this respondent's debt.

Amended answer of Jos. Watson.

Respondent answers that he did file an answer to the original bill, and which answer he was informed was insufficient, because it did not answer the matters stated in the bill, and, therefore, the same was withdrawn, as the respondent was informed; and he was required, through John McIver, to file a more full answer, which he accordingly did. Who it was that withdrew said answer, or where the same is, he does not know, not having seen the same since he was qualified thereto, nor does he remember the contents thereof at this length of time.

Without this, that there is any matter or thing in said amended bill which is not in this answer, and the answer to the original bill, not already answered, traversed, or denied; wherefore, this repondent prays to be hence dismissed, with his reasonable cost and charges.

JOSIAH WATSON.

DISTRICT OF COLUMBIA, *Washington County, ss.*

This day appeared before me, the undersigned, an acting justice of the peace of said county and District, Josiah Watson, the respondent to the foregoing answer, and made oath that the matters and things set forth and alleged in said answer are true, so far as the same is within his own knowledge; and that those matters and things which are set forth upon the information of others, he believes to be true.

Sworn and subscribed 1st day April, 1824, before

WILLIAM WATERS.

And the defendant, John McIver, on the 2d day of June, 1824, at the clerk's office, comes and files his separate answer to the amended bill of the complainants, which is in the words and figures following, to wit:

The answer of John McIver to the amended bill of complaint of Alexander McCall:

Amended answer of John McIver.

This respondent, saving to himself all advantages of exception to the many errors and untruths in said bill contained, for answer to so much thereof as it is material for him to answer unto, saith that he does not know that S. Donelson executed to Josiah Watson any deeds as agent for Arthur Hart or W. Williams, or any other person, where he had no authority to do so; and he denies that the deed for

the land in controversy was made to Watson for the considerations or causes set forth in said amended bill: on this point he relies on his former answer. Respondent understood from Watson that, when he purchased said lands, he paid for them in money and goods, and believed he was acquiring a good title, and that there was no condition on said sale. Respondent does not know that any such letters ever passed between Watson and Donelson as stated in said amended bill: he never heard of, or saw or read, any such, either amongst the papers or in the books of Watson, so far as he recollects.

Amended answer of John McIver.

Respondent, after he was appointed assignee of the estate of the bankrupt Watson, took upon himself the discharge of the duties . He discovered that Watson's business was in much confusion, his papers scattered, and, in some cases, they were not to be found; and, in the course of investigations which his duty to Watson's creditors rendered necessary, he found, in the possession of Mr. Dillon, the power of attorney from Armstrong to Donelson. He understood had procured the same in Raleigh, where Donelson had formerly lived, and kept many of his papers. On recovering the same, in 1811, he caused it to be proved, and had it registered in Bledsoe county, 21 January, 1812, and in Maury county in December, 1812: this he did honestly and fairly in discharge of his duty.

Respondent received into his possession the books and papers of Josiah Watson, and had retained them until his removal to this State, when he left them in Alexandria with his agent; since which time, to wit, at May term, 1823, an order was made in a court of chancery sitting for the county of Alexandria, in the District of Columbia, at the instance of the complainant in a suit, Josiah Watson, the commissioners and creditors, and this respondent, that certain of the books and papers of said bankrupt should be deposited with the clerk of the commissioners; soon after which, respondent has been informed, about fifty of the books, and some papers, were taken possession of by said clerk, where they now remain.

Amended answer of John McIver.

This respondent believes, so far as his recollection serves him, that there is no entry on the books of said Watson of the transaction of the purchase and payment of the lands now in controversy; and he understood from Watson that, when the purchase was made, the payment was also made in full, and settled; but of this he has no personal knowledge.

Respondent has understood that Josiah Watson did forward to this place an answer to the original bill; and, upon it being examined by one of the counsel, it appeared to be so inartificially drawn, that it was not an answer to the allegations of the bill, and was therefore not filed.

Upon receiving this information, respondent requested Watson to have an answer prepared to all the points in the bill, so far as he had any knowledge of them. This respondent never seen the first answer forwarded, nor does he know where it is.

This respondent has not seen any of the books of Watson since the filing of this amended bill. He has not been able to go to the District of Columbia since that time, without great personal loss and inconvenience. He is not able to state the different amounts paid by Watson to Donelson for land, and he believes Watson's books will not show it; nor do said books, as he believes, show the quantity of land bought by Watson from Donelson, nor does this defendant know the quantity purchased by him.

Amended answer of McIver.

This respondent, by way of defence to said bill, and the relief therein prayed, says this honorable court ought not to take jurisdiction of the same; that the matter set up by complainant is properly *triable* ——— in a court of law; that the claim of complainant is stale, and the transaction of so long standing, that this court will not inquire into the same.

And this defendant also relies on the benefit of the different acts for the limitations of actions, of three years and of seven years; and prays the benefit of the same in the same manner as if they were personally pleaded.

This defendant denies all fraud or combination with which he is charged, and prays to be hence dismissed, with his costs.

UNITED STATES OF AMERICA, *District of West Tennessee, ss.*

This day personally appeared before me, John McIver, the respondent in the foregoing answer named, and made oath that the matters and things in said answer stated, as of his own knowledge, are true; and those matters and things therein stated, not of his own knowledge, he believes to be true.

JOHN McIVER.

Sworn and subscribed before me, this 2d June, 1824.

N. A McNAIRY, *Clk.*
By JNO. CARSON, *Dep.*

Colonel Stockly Donelson's power of attorney, executed by Martin Armstrong. Registered Dec. 4th, 1812.

Know all men by these presents, that I, Martin Armstrong, of Stokes county, and State of North Carolina, for divers good causes and considerations me thereunto moving, have given and granted, and, by these presents, do hereby *do hereby* give and grant unto Col. Stockly Donelson full power and authority, for me and in my name, to dispose of all and every part or parcel of lands that he, at this time, has delivered to him in grants, either military or those entered *entered* in the land office of the State aforesaid, either in my own name or in partnership with himself, or any other person whatsoever, and to make deeds in fee for the same in as full and ample a manner as I, myself, would or could do were I personally present; thereby nominating, constituting, and appointing him for the purpose aforesaid; also ratifying and confirming whatsoever he, the said Stockly Donelson, my attorney aforesaid, shall lawfully do, or see cause to done in and concerning the premises; as, also, to make sale and dispose of the lands of the Reverend Adam Boyd, agreeable to a power of attorney given me by said Boyd; hereby ratifying and confirming whatsoever he, my said attorney, shall also do concerning the premises, or any other sales he shall see cause to make for any other lands for which he has not my grants; which shall be good, to all intents and purposes, as those before mentioned.

In testimony whereof, I have hereunto set my hand and seal, this 2d day of June, A. D. 1790.

MARTIN ARMSTRONG, [SEAL.]

Signed, sealed, and acknowledged, before

WM. HUGHTELL, J. P.

P

STATE OF KENTUCKY, *Cumberland County Court Clerk's Office, the 9th day of December*, 1811.

I, John E. King, the clerk of the court holden in and for the county aforesaid, do hereby certify that, at a monthly court held for said county, on the day of the date aforesaid, the foregoing letter of attorney from Martin Armstrong to Col. Stockly Donelson, was proved, in open court, to be the act and deed of the said Martin Armstrong by the oath of Wm. Hughtell, a subscribing witness thereto; which is ordered to be certified to the several registers in the different counties in the State of Tennessee. And it is further ordered, that the seal of the county be attached thereto.

In testimony whereof, I have hereunto set my hand and private seal, (there being no seal of office, but an order of the court aforesaid, authorizing me to use my private seal until one was provided,) at my said office, the day and year first above written.

JOHN E. KING.

THE COMMONWEALTH OF KENTUCKY, *Cumberland County, ss.*

I, John Hillis, presiding justice of the peace, now sitting and composing one of the court first above written, do certify that John E. King, who has subscribed his name to the foregoing certificate, is, and was at the time he subscribed the same, acting clerk of the court aforesaid, and duly authorized to act as such; and that due faith and credit is, and ought to be, given to all his official acts as such; and that the foregoing certificate and attestation of his is in due form of law.

In witness whereof, I have hereunto set my hand, the day and year first above written.

Presiding Justice JOHN HILLIS, [SEAL.]

STATE OF TENNESSEE, *Maury County.*

I, Pleasant Nelson, register of said county, do hereby certify, that the foregoing is a true copy as from the records of my office, in book B, pages 84, 85, and 86. Given under my hand, at office, this 23d day of June, in the year of our Lord 1823.

PLEASANT NELSON, *R. M. C.*

At June term, 1819, came the said complainant, by his attorney; and it appearing that an injunction had heretofore been granted him by the judge of the district courts of the United States for the districts of East and West Tennessee, and said complainant now move the court here that said injunction may be continued, it was, thereupon, ordered by the court that said injunction be continued.

And said complainants at the September rules, 1820, by his counsel, comes and files his replication to the answers of defendants, in the words and figures following, to wit:

This repliant, saving and reserving, &c. for replication thereto, saith that he will aver and prove his said bill to be true, certain, and sufficient in the law to be answered unto, and that the said answers of the defendants is uncertain, untrue, and insufficient, to be replied unto by this repliant, with that that any other matter or thing whatsoever in the said answer contained, material or effectual in the law to be replied unto,

Replication.

confessed and avoided, traversed or denied, is true. All which matters and things this repliant is, and will be ready to aver and prove, as this honorable court shall direct; and humbly prays, as in and by his said bill he hath already prayed.

BALCH, *for Complainant.*

And at June term, 1822, the complainant be allowed to file a replication to defendant's answers on or before 2d Monday of this term, such exceptions, if filed, being first seen by the court.

Order and replication. And the said complainant, by his counsel, files his replication in the following words:

The complainant, for a replication, saith that the facts alleged by defendants to the amended bill of complaint, inconsistent with the allegations in said bill, are untrue; and that the facts charged are true, which he is ready to maintain and prove as this honorable court shall direct: he therefore prays such decree as is prayed for by his said original and amended bill.

G. W. GIBBS, *Attorney for Complainant.*

And the complainant, by his counsel, on the 14th day of June, 1824, comes and files his exceptions in the words and figures following, to wit:

1. Watson does not state the amount of consideration paid for these lands; when paid; when the deed was executed, purporting to be made 6th February, 1797.

2. He does not state the amount of lands purchased; whether he had any power present when the lands were purchased.

3. He does not answer and set forth the contents of his letters to Donelson upon the subject of his purchases, and completing the title.

Exceptions. 4. He has not stated whether he had not received conveyances from Donelson, as attorney for A. Hart, W. Williams, &c. when he had no power.

5. The answer is evasive; does not set forth and discover where his books and papers, or produced them, or give copies thereof connected with his land purchases from Donelson.

6. McIver does not produce the books of Watson, or copies required by the amended bill.

Order. And at June term, 1827, on argument of the complainants' exceptions to the answer of the defendant's It is ordered by the court that said exceptions be overruled.

At June term, 1829, on motion of the complainant, by his counsel, and for reasons disclosed in his affidavit, it is ordered by the court that this cause be continued until the next June term of this court, at which time the complainant shall go to trial, or his bill shall stand dismissed.

It is further ordered, on the complainant's motion, that the defendants produce and file in the clerk's office of this court, all letters in the possession of them, or either of them, addressed by Stockly Donelson to said Watson in relation to their land contracts, and all their letters or their copies addressed by said Watson, his clerks, or partner, or agents, to said Donelson, on the subject of their land dealings; and that they produce the books of said Watson containing entries in relation to the land dealings between himself and Donelson; and if the books cannot be produced, then sworn copies from said books of all of said entries, and that the defendants

have five months to comply with this order; and, in the event the defendants should fail to file the originals or copies, as the case may be, within the time aforesaid, then the complainant is at liberty to obtain and file sworn copies of the said entries from said books. And the defendants may take the evidence in relation to any matter that may pertain to the evidence, their original papers, or copies of the aforesaid papers, or any records to be produced by complainant.

Order—1829

At June term, 1830, on motion of the complainant, by his counsel, and with the consent of the defendant's counsel, this cause is revived against Daniel Graham, and Maria his wife, and John McIver, jr., heirs of said John McIver, deceased.

Order—1830.

The following depositions and papers were read in evidence in said cause, to wit:

To the honorable the Judges of the Circuit Court of the United States for the District of Columbia, and county of Alexandria, sitting in Chancery:

The bill of complaint of John McIver, assignee of the estate and effects of Josiah Watson, a bankrupt, complainant, against the commissioners of bankruptcy and the creditors of said Josiah Watson, a bankrupt, humbly complaining, showeth to your honors, your orator, that, on the 15th day of April, 1803, a commission of bankruptcy was regularly sued out under the hand and seal of the honorable Wm. Kilty, then chief judge of the circuit court for the District of Columbia, &c. against Josiah Watson, of Alexandria, directed to George Gilpin, Jonah Thompson, and Francis Peyton, commissioners of bankruptcy for the county of Alexandria: and such proceedings were had upon the same, that said Watson was found and declared to be a bankrupt, and submitted himself to examination, and surrendered his books, papers, &c. together with a schedule of his estate and effects; to all which proceedings on record before said commissioners your orator refers.

That, at different times previous to the 30th July, 1804, sundry creditors proved their debts; and other creditors, or their representatives, who could not fully prove their debts, had claims entered for the same; all which will appear by record of said commissioners, a list of which, as proved and claimed by each creditor, is herewith filed, marked A.

Your orator also shows that, on the 14th day of May, 1803, in pursuance of public notice, a meeting of the commissioners and creditors was held in this case for the purpose of choosing an assignee. At which meeting, your orator was chosen assignee of the estate and effects of said bankrupt, which appointment he agreed to accept, and has continued to discharge the duties thereof until this time.

A list of the creditors at said meeting is entered on the records of said commissioners, and will be shown to your honors. He also shows that, at a subsequent meeting of said commissioners and creditors, held in this case on the 30th July, 1804, in pursuance of public notice, in order that the creditors might assent to, or dissent from the assignee chosen under said commission, commencing, prosecuting, or defending any suits at law or in equity, for recovery of any part of said bankrupt's estate or effect; also, compounding, submitting to arbitration, or otherwise agreeing to any matter or thing relative thereto, and on other special affairs, &c. a general view and examination was taken of the interests surrendered by the bankrupt, which appeared to consist principally of claims to land in the States of

Kentucky and Tennessee, which it was apprehended were involved in much obscurity, contention, and difficulty, from want of previous attention to the title papers; non-payment of the taxes for several preceding years; from conflicting claims set up by other persons, and from a want of knowledge of their local situation and identity.

It was expressly named and understood, as the wish of the creditors present, that the assignee should go in person to the States of Kentucky and Tennessee to prosecute, investigate, and ascertain the situation of those claims, and make sale thereof if practicable: a question arose whether in cases of difficulty, it would be proper for the assignee to have special meetings of the creditors, to obtain definite instructions before he should act, when it was considered that such a course would be productive of great delay and injury to the estate as it was then situated; and it was determined that the assignee should be invested with the most ample and complete power "to do and perform every act and thing which, in his judgment, might be beneficial to the estate." In pursuance of which, an authority and instructions were executed and furnished to him, signed by the said creditors at said meeting, which is herewith filed, marked B, and to which he refers as part of this bill, and which is entered on the records of said commissioners.

Your orator also shows that, at the same meeting, an agreement was entered into and signed by said creditors, with your orator, whereby, in consequence of your orator having undertaken to go in person to the States of Kentucky and Tennessee, and Virginia, for the purpose of settling and disposing of said bankrupt's estate, the said creditors contracted and agreed to give your orator, the assignee, for and during the time he should be absent and employed in the business of said estate, the sum of one thousand dollars per annum, and pay his expenses incurred during such time, out of the proceeds of the estate, exclusive of such commissions on the sales and collections as might be fixed and allowed by the commissioners and creditors, a copy of which agreement is herewith filed, marked C, and is on record amongst the proceedings in said case.

Your orator shows to your honors that, from the schedule returned by said bankrupt, a copy of which is herewith filed, marked D, under the signature of the late clerk of the board, the principal reliance was placed on the land claims in the States of Kentucky and Tennessee, out of which to raise any sum for the creditors; the resources from any other property were expected to amount to a small sum; and your orator, from some experience before that time, (having visited Tennessee in the years 1798 and 1799,) was in some degree aware of the uncertainty of the land titles from numerous causes existing there, and almost unknown in the eastern States, but which would apply with additional force to this property, as the title had passed through different persons, and the purchases were made from agents, or persons represented to be agents, of the owners, and very few of the original deeds and title papers were in possession of the bankrupt, and particularly the lands purchased in Tennessee from Stockly Donelson, as agent for Colonel Martin Armstrong, amounting to 35,170 acres. No power of attorney had been found, although strict search had been made by the agents of the bankrupt, and application had been made to Armstrong to confirm the sales, which he refused to do, and denied that any such power existed, and further denied that ever he had received any consideration for the lands.

The lands in Kentucky had for many years been under the management of Mr. John Taylor, who resided in Kentucky, and who had rendered

very little satisfactory information respecting them; and your orator, after making minute and tedious examinations amongst the bankrupt's papers, ascertained that he could not discover the extent or nature of his interest there, without personal attendance; and, after devoting a considerable part of his time and close attention to the affairs of this estate, from the period of his accepting the duties of assignee, until the 21st July, 1805, on which day he departed from Alexandria for the western country, by way of Pittsburgh, to Kentucky, and thence to Tennessee.

On this journey, your orator spent eleven months and 19 days, and returned home 10th February, 1806. During this time, he was industriously and laboriously employed in acquiring a knowledge of the situation and state of the titles of the property belonging to the estate in Kentucky and Tennessee; frequent, fatiguing, and perplexing journeys were necessarily made, and repeated, from place to place, over an immense extent of country. Counsel had to be consulted from time to time; deeds to be registered at different places; surveyors, chain-carriers, and others who could lead to a discovery of the lands, must be employed; search must be made different and distant places in order to collect so many of the title papers, entries, grants, &c. as would enable your orator to understand the state of the property, for the preservation of which he had been employed.

In order to a correct understanding of the property in Kentucky, it was essentially necessary to employ John Taylor, for a considerable time, to accompany your orator in his investigation; and, although the property in that State has proved unfruitful, yet it was no less your orator's duty to do every thing necessary to preserve what was then considered to be of much value, that it would have been if it had become valuable.

Your orator on said journey necessarily expended much money, and also obtained information, and performed services which it is out of his power to represent upon paper, and which cannot be well understood or appreciated by the creditors, or any other persons, without a knowledge, by experience, of the difficulty of attending to, and succeeding in controversies about land in the western country. Your orator, however, at that time, and in every stage of the business until the present time, acted under the directions and authority of said commissioners herein before referred to, and, according to the best of his judgment, for the interest of the estate of the bankrupt.

Your orator, at subsequent periods, made seven additional journeys from his residence to the western country, to wit: He left Alexandria 21st June, 1807, and returned 26th July, 1808; being absent 13 months and five days. He again left home 16th May, 1809, and returned 28th January, 1810; being absent eight months and twelve days. On his third journey, he left home on the 20th November, 1810, and returned 14th November, 1812; being absent one year, eleven months, and 16 days. On his fourth journey, he left home the 2d May, 1813, and returned 21st December, 1814; being absent one year, seven months, and 19 days. On his fifth journey, he left home on the 25th September, 1815, and returned the 1st December, 1817; being two years, two months, and seven days. On his sixth journey, he left the 28th April, 1818, and returned 1st May, 1820; being absent two years and two days. On the seventh journey, he left Alexandria the 1st June, 1820, and returned home 25th August, 1821, being absent one year, two months, and twenty-five days. He also devoted some time, say one month and eight days, in Virginia, in making sale of horses, and in collections for the same.

From the foregoing view, it will appear that he was absent about eleven years, 9 months, and 15 days; but, your orator taking into view that, altho' his absence from home was necessary to an investigation and prosecution of the business of this estate, and the same could not have been effected successfully without it, yet in the course of that time he took other business under his charge, which he knew he could attend to without in the least interfering with this estate, and which in fact rendered him some aid in doing so; and, on that account, he has only charged five years and about seven months for the first seven journeys, and he has in like manner charged one-third of his travelling expenses. For the last journey he has charged the sum of two hundred dollars. Your orator knows it to be the fact, and so charges, that the business of said estate could not have been finished or prosecuted successfully in less time by any man, and at less expense, than it has been by him. That in all matters relating to the same, it was urged with as much zeal as it was in his power to do; that he has encountered and overcome difficulties that no person can duly appreciate, unless he had some experience in prosecuting controversies of the like kind in Tennessee; and which, for the sake of avoiding a tedious detail, he has not herein enumerated. He has, however, for the information of your honors, filed herewith, by way of exhibit to this bill, a brief or summary journal of his employment, and of his different journeys, and the manner in which he was employed during that part of his time devoted to the business of this estate; representing, also, a faint outline of the difficulties attending the same, and the nature of the controversies about the property of the bankrupt, which journal is marked exhibit E, and referred to as part of his bill. Your orator shows, that, previous to his departure for the western country, on the 20th February, 1805, he had paid out and expended for the estate, including the sum of two hundred and fifty dollars charged for his own labor, time, and trouble, and fifty dollars paid for a bookkeeper to open a set of books, draw off statements, copies of accounts, &c. for the estate, the sum of sixteen hundred and forty-five dollars forty-six and a half cents; that he received in cash for the estate previous to that time, and in notes due and payable the 5th of July following, and including also $58 $\frac{59}{100}$ paid on the latter day, the sum of $2,933 $\frac{10}{100}$, making himself chargeable with the sum of $1,287 $\frac{63}{100}$; all of which will appear by his account herewith filed, marked F; and to which he refers as part of this bill.

Your orator refers to his journal, marked E, to show the trouble and difficulty which he encountered previous to that time, in the sale of the mortgaged property, and payment of the debts incumbering the same.

Your orator also shows that, from the said 20th day of February, 1805, until the 27th of May, 1820, he paid out and expended for said estate, including expenses in travelling on said business, and his salary at the rate of $1,000 per annum, for his time so employed, and including commissions on the sale, and the collections of the proceeds of sundry land warrants, the sum of $13,707 $\frac{96}{100}$; and, during the same period, he received $16,872 $\frac{66}{100}\frac{1}{2}$, including the sum of $1,287 $\frac{63}{100}\frac{1}{2}$, balance in February, 1805, as before stated; making the aggregate credits on the 27th May, 1820, of $16,872 $\frac{66}{100}\frac{1}{2}$, exclusive of money collected on the sale of lands to John Childress hereinafter noticed, leaving a balance in his hands of $3,164 $\frac{70}{100}\frac{1}{2}$ on the said 27th May, 1820.

That, from the said 27th May, 1820, until the 14th March, 1822, he has charged the estate for money expended, including two hundred dollars for

his time and trouble on the last journey to Tennessee, the sum of one thousand and 85 dollars 53¼ cents; from which last balance of three thousand one hundred and 64 dollars 70½ cents due then by your orator, deduct said sum expended of $1,085 53¼ cents, leaves due from your orator, on the latter day, the sum of $2,079 $\frac{17}{100}$; all of which will appear by his account of the items before referred to, for which sum your orator offered to account with said commissioners and creditors. Since the 14th March, 1822, sundry sums have been expended, amounting to $258 $\frac{18}{100}$, leaving a balance due from your orator on the 29th March, 1823, of $1,820 $\frac{98}{100}$, as will appear by said account, marked F, for which sum your orator is ready and willing to account with said commissioners and creditors. Your orator further showeth unto your honors, that, on the 25th day of July, 1812, he contracted with John Childress, of Nashville, Tennessee, for the sale of eighteen thousand two hundred and 50 acres of land on the waters of Duck and Elk rivers, and entered into an article of agreement with him for that purpose; and, on the 18th of September of that year, the contract was perfected by receiving from said Childress his four several bonds, with Jenkin Whitesides and George W. Campbell his securities; each bond for $2,825, falling due successively on the 18th day of September, of the years 1813, 1814, 1815, and 1816, making, in the whole, the sum of $11,300. He also received four several bonds for the sum of $706 25 cents each, from the same persons, payable at the same times, which he assigned to Wm. T. Anderson, in pursuance of a contract made with him by your orator on the day of , 1807; in which your orator contracted to give said Anderson one-fifth part of said lands on Duck and Elk rivers, being one fifth of about 18,250 acres of the lands of Martin Armstrong, conveyed to the bankrupt by Stockly Donelson, as his agent: said Anderson, on his part, engaging to find and identify said lands if practicable; to have them surveyed and processioned; and to prosecute and defend all suits necessary towards the establishment of the title, at his own proper expense. A more particular account of which, and of the reasons which made it necessary for your orator to make said contract, are stated in the journal herewith filed, and before referred to, marked E. When your orator made said contract with Childress, the title of the bankrupt was contested and opposed by adverse claimants, who were in possession of the land, and no sale of the same could be made unless your orator would enter into a covenant to refund the consideration money and interest, if the same should be lost, and so in proportion for any part that should be lost. He therefore, on said sale, and receiving said bonds, executed his covenant to said Childress to that effect; all of which he will be able to show to your honors.

He also shows, that it has since appeared that the title of said bankrupt was not good; for, about 832 acres of one of the tracts on the waters of Elk river, which Armstrong had conveyed previous to the sale by Donelson, as his agent; and, also, to about 200 acres of one other tract, taken by the interference of a better title; for which lands your orator was compelled to make a deduction from the money due from Childress on said bonds.

Your orator shows that he has collected from said Childress the sum o $9,285 77 nett, deducting your orator's commission, as will appear by his said acount, marked F. He also shows that, since the collection of the same, Alexander McCall, one of the heirs of Martin Armstrong, who is deceased, has filed his bill, in equity, in the circuit court of the United States, at Nashville, against Josiah Watson and your orator, for the purpose of set-

ting aside the title of said bankrupt to the lands purchased by him from said Donelson, as the agent of Armstrong; alleging that said power of attorney, under which he acted, had been previouly revoked, and that no title passed by the deed executed by Donelson; which suit is now depending, and it is doubtful how the same will terminate. If the same should be decided in favor of McCall, the consequence will be a loss of all the lands sold to Childress, and that your orator will be compelled, under the terms of the sale, to refund the money received from Childress and his securities, with interest from the time of eviction. For the particulars of said controversy, he refers to his journal herewith filed, and his different reports made to the commissioners and creditors, which will be hereafter noticed. Said sum of $9.825 77, he has on hand, ready to be paid over, so soon as said suit is ended favorably to the estate; or he has it ready to be invested, by the directions of the commissioners, in some safe stock, in his own name, to await the event of said suit, and has offered to the commissioners and creditors so to do.

Your orator also shows unto your honors that, on the 27th day of May, 1820, at a meeting of the commissioners and creditors, he made a report to them of the state of the business under his charge; a copy of which is hereto annexed, marked G, and to which he now refers your honors for the state of his account, and of the business under his charge; and, on account of the unfinished state of much of the business of the estate, nothing was done, except to make the bankrupt an allowance of $300 to procure a more full answer to the bill filed by McCall than had been prepared by the bankrupt before that time. Your orator soon after, to wit, on the 1st June, 1820, left Alexandria for Tennessee, to attend to the business under his direction, and did not return until 25th August, 1821. A meeting of the commissioners and creditors was called to take place on the 3d of September, 1821. Your orator, at said meeting, made a report to the commissioners and creditors, which is herewith filed, marked H, and to which he refers as part of his bill. On that day a committee of the creditors was appointed to examine and make a report on your orator's accounts; which committee your orator attended, with his accounts of receipts and expenditures, and his vouchers; and the next day they made a report to the meeting, a copy of which is herewith filed, marked I. At a subsequent meeting, held on the 19th of October, in the same year, when your orator handed to said meeting his third report, detailing, at more length, some of his proceedings, and replying to the objections to his accounts, as stated by the report of said committee, which is herewith filed, marked K: which was again answered by a second report of the committee, on the 20th of October of said year, a copy of which is herewith filed, marked L.

Your orator further shows that subsequent meetings of the commissioners were held, viz., on the 11th December, 1821, and at other times, at which your orator attended with them, and endeavored to have his accounts allowed and adjusted in an amicable manner; which meetings and negotiations continued until the 20th December, in said year, when your orator called a meeting of the creditors and commissioners, by a public notice, to take place on the 22d January, 1822: which meeting accordingly took place, and continued, by adjournment from to day, until the 30th of same month. On which several days, said commissioners were principally employed in examining the claims preferred by the creditors of the bankrupt, and re-examining the claims formerly proven. Some of the claims exhibited were admitted, and others rejected; and, in the cases rejected, trials by

jury were required, and were allowed. For a statement of the claims allowed, and of those rejected and referred to trial by a jury, he refers your honor to exhibit herewith filed, marked M. From which it appears, that the claims allowed amount to $30.270 60, and the claims rejected, and ordered to be tried by juries, amounts to $67,316 79.

Your orator shows that, on said 30th day of January, 1822, the said commissioners read to the said creditors an order, which had by them been drawn up, declaring a dividend of the money belonging to said estate; a copy of which, and of the calculations made as the basis of their order, is herewith filed, marked N, and referred to as a part of this bill; in which order they declare your orator to be indebted to said estate in the sum of $31,990 39. Your orator states that said order was made without his assent or admission, and without said commissioners having previously communicated to him the basis on which said calculation and order were made. A copy of his protest against said award, or order of dividend, is hereto annexed, N N. He produced to them all the charges of expenditures, and payments made for said estate, and his charges for compensation, as are herein before stated, and insisted before them that he was entitled to the same.

They did not examine your orator on oath, although he was willing to have rendered any satisfaction necessary, but rejected the greater part of the account of your orator. They rejected all the items charged for his time and trouble, and a large part of charges for money actually and necessarily paid out of his own funds for the benefit of the estate. Without the appropriation of your orator's time in that way, and without the payment of those sums which they have rejected in your orator's account, your orator is very certain that not one dollar could ever have been saved to the estate from the lands in Tennessee. They have charged your orator with interest at a time when he was in advance to the estate. They have refused the allowance which was solemnly pledged to him by the contract of the creditors, and which was the principal inducement for him to leave his business in Alexandria, and take upon himself the perplexity and privations of attending to this most troublesome of all other concerns. And because your orator has been, in some degree, fortunate in some other business which he has attended to, and has made a little property, they seem desirous of rewarding his years of toil, perplexity, and care, in their business, by wresting the whole of the same from him.

Your orator shows to your honors that, in equity, and agreeably to every principle of law, he is entitled to the different items or sums charged in his account, herewith filed, against the estate of said bankrupt; and the same ought to be allowed by the said commissioners and creditors; and that he is not chargeable with a larger sum than that stated in his said exhibit; that he is not bound in law or equity, nor liable to pay over, or divide amongst the creditors, the said sum of $9,285 77 received for the lands sold to Childress; that the same is not liable to be divided until the termination of the suit in equity by Alexander McCall against said bankrupt and your orator; that said commissioners and creditors ought so to consider the same; and that, from the situation and circumstances of this estate he ought not to be chargeable with interest on the different items by him received, in as much as he, at all times, has been ready and willing, and has offered to pay, (as will be seen by his several reports made to the commissioners and creditors,) the said sum of money remaining in his hands; and if there may appear any seeming delay in this troublesome and tedious business, the same

is entirely occasioned by the nature of the property consigned to his charge; to the difficulty attending the prosecution of the claims in countries far distant from the residence of the commissioners and creditors, and amongst people whose sectional feelings, and whose interests and connexions, were all enlisted against the establishment of the title of the bankrupt. All which matters have been fully detailed to the said commissioners and creditors, and who ought to have regarded the same.

And your orator had well hoped the said commissioners and creditors would have duly appreciated the services of your orator, would have allowed all his just and reasonable expenditures and charges, not only as the same related to such of the property as had been disposed of, but, also, in relation to the lands lying on the waters of the Mississippi, purchased from Donelson, as agent for Martin Armstrong; and to the lands secured to the estate by virtue of warrants or certificates obtained for lost lands; a list of which will appear in his reports to said commissioners and creditors, hereto annexed, marked O. But, in the reasonable hope he has been disappointed; said commissioners and creditors, or certain of them, combining themselves together, with the purpose of injuring and harrassing your orator, and subjecting him to the loss of large sums of money paid out and expended by him for the benefit of said estate, and to enable him to ascertain the nature of the right to the property, and to prosecute the same with success; and depriving him of the reasonable sums charged for his personal time, trouble, and expense, agreeably to the undertaking of the creditors herein before referred to; and of subjecting him to large and unreasonable sums in interest upon moneys received, when he was in advance for the estate from his own funds; and for the purpose of drawing from your orator the money received from the sale of land to Childress, when your orator may be subjected to refund the same, and which he has no doubt will be done, unless the particular and steady attention of your orator, or some other person well acquainted with the facts, shall be devoted to the same. Said commissioners have, as herein before stated, declared such dividend, and made said order; and many of said creditors threaten to institute actions against your orator to recover their proportion of said sum, declared by said commission s; and many others of said creditors, to wit, Lawrence Berry's executor, John Gulick's executor, Samuel Nichol, executor of Samuel Nicholls, and Ann Hunter's executor, have instituted suits against your orator in the United States' circuit court of the District of Columbia for the county of Alexandria; all of which proceedings are contrary equity, and tend to the great injury and oppression of your orator. In tender consideration whereof, and for as much as your orator is remediless except in this honorable court, where matters of account are taken, accounts settled and decreed according to the rules of equity, and where fraud, oppression, and hardship, are relieved against. Your orator prays your honors, that the said claim of your orator may be heard, examined, and settled in this honorable court; that the said commissioners, or the survivors of them, to wit, Jonah Thompson and Francis Peyton, and the said creditors, to wit, Gurden Chapin's administratrix, Joseph Harper's administratrix, Elisha C. Dick, or his assignee, William Hodgson, or his trustee, James Kennedy, junior's, administratrix, James Keith, Richard M. Scott, Lawrence Berry's executor, John Memeaster, John Suluck's executor, Mathew Page, Francis Stribling, Gavin Hamilton, John Hopkins, John Pancoast, Washington Bowie, Samuel Nicholls, James Keith, jun., Ann Hemster's executor, Walter A. Smith, William J. Hall's

administrator, James Wilson's administrator or executor, Jonah Thompson and Richard Veitch, lately trading under the firm of Thompson and Veitch, Joseph Tidball, William Taylor, John Batchelor, Washington J. Washington, Andrew Ramsay, and William Ramsay, lately trading under the firm of Andrew and William Ramsay, and such others, who now are, or may hereafter be, admitted as creditors by the said commissioners; all of whom are prayed to be made defendants to this bill, may make full answer to the allegations in the foregoing bill stated, fully and particularly; and that, by a decree of this honorable court, the said commissioners, or the survivors of them, and the said creditors, may be enjoined from further proceeding upon said order, declaring a dividend, and from commencing or prosecuting any suit or suits at law against your orator, until a final hearing in this cause; and that your orator's accounts may be examined in this honorable court, and said defendants decreed to account with your orator of and concerning all of said matters stated or referred to in the exhibits in this bill; and that he may have such other and further decree as is suited to his case, &c.; and he will ever pray. May it please your honors to grant writs of subpœna and injunction, &c., directed, &c.

STATE OF TENNESSEE, *Rutherford County:*

I, John McIver, personally appeared before me, Bennett Smith, an acting justice of the peace for the county aforesaid, and made oath according to law, that the facts set forth in the foregoing bill, so far as they are stated of his own knowledge, are true; and so far as stated to be derived from the knowledge of others, he believes to be true.

Given under under my hand, this 12th day of May, 1823.

JOHN McIVER.

Sworn to, and subscribed before me, this 12th May, 1823.

BENNETT SMITH, *J. P.*

DISTRICT OF COLUMBIA, *Alexandria County, sct.*

I, Edm. I. Lee, clerk of the United States' circuit court of the District of Columbia, for Alexandria county, do hereby certify that the foregoing is a true copy from the original bill of injunction, filed by John McIver vs. Jonah Thompson and others, commissioners and creditors of the late Josiah Watson, a bankrupt, and now depending in said court.

In testimony whereof, I have hereunto set my hand and seal of office, this 27th day of June, 1831.

EDM. I. LEE.

DISTRICT OF COLUMBIA, *sct.*

I, William Cranch, chief judge of the United States' circuit court of the District of Columbia, do hereby certify that the foregoing attestation of Edm. I. Lee, clerk of the said court for the county of Alexandria, is in due form.

Given under my hand, this 6th day of July, 1831.

W. CRANCH.

The following were the depositions that were read on the trial of the foregoing cause, to wit:—Robert Casey, No. 1.

Question 1st. Were you doing business for Josiah Watson, as a clerk or

otherwise, in the year 1796, or before that period, or after, in Alexandria, in the State of Virginia?

Answer 1st. That, by a memorandum in his possession, it appears that he first entered into the employ of Josiah Watson, in Alexandria, on the 27th of June, in the year 1797.

2. Were you not present when Stockly Donelson conveyed to Watson thirty-five thousand one hundred and seventy acres of land in the State of Tennessee? and were you not one of the witnesses to said deed, which deed purports to be made by said Donelson as attorney in fact for Martin Armstrong?

Answer 2d. To the second, he answers and says that he has no recollection of a deed for that quantity of land from Donelson to Watson, as attorney for Armstrong, or otherwise, or of being a witness thereto.

3. State whether the consideration of that deed was not, or otherwise, if the fact be so, for lands that Watson had previously purchased from said Donelson, and the title had proved defective?

To the 3d, he answers and says that, knows nothing of the consideration, either as to amount or description.

4th. State the reason why the said deed refers to a power of attorney, bearing date the blank day of blank, and duly recorded in the court of blank.

To the fourth, he answers and says that he can state no reason, as he has no recollection of the transaction.

5th. State whether Donelson had any power of attorney from Armstrong present, when said contract was made.

To the fifth, he answers and says that, knows not.

6th. State whether it was not known to Watson that Donelson had no power to sell said land; and whether Watson did not rely upon the promise of Donelson to send on said power afterwards? Relate all you can remember on this subject.

To the sixth, he answers and says that, he has no recollection of this, nor can he state any circumstances respecting it.

7th. State whether Watson did not send you to the State of North Carolina, or elsewhere, to endeavor to get Armstrong to ratify said sale; and whether Armstrong did not refuse.

To the seventh, he answers and says that he went to North Carolina on Mr. Watson's business, but has no recollection of the particular nature of that business, but believes the *the* re-acknowledgment of deeds was part of his business on that errand; that he also went to Nashville, in Tennessee,

Charles F. Mayer, Commissioner, Robert Casey,

on business of said Watson and others; that a memorandum in the possession of the witness, and in his handwriting, and under date 14th April, 1798, in Nashville, in Tennessee, speaking as of the acts of the witness, and in his name, states as follows: I waited on General Armstrong, and asked him for a copy of the power of attorney given by him to Stockly Donelson for the sale of lands, as I had forgot to get a copy of it at Knoxville, where I said it was recorded; but he informed me that he had some of the papers with him, and therefore could not tell the date of it, and asked to see the deed, which I showed him, (meaning the long one;) and after deliberately reading it over, I asked him if he could not recollect whether those lands were specified in the power of attorney, but he said he could not. He said he had given Donelson a limited power to sell his proportion of a quantity of land located, in partnership with said

Donelson, on Clinch and Holston, and that, when he would make the contract himself, or some person authorized by him, would go forward to make the titles; and he appeared very anxious to see the power of attorney, and asked me, different times, if I had seen it or knew the date of it; but I informed him not, but believed Mr. Watson had seen it previous to his purchasing, and that I had then a letter from Colonel Donelson to Major Hocket, of Knoxville, to let me see the power. I then asked him if he had not given him a power for those lands in the western district, and on the Mississippi? He said he had a power from some people in Georgia to dispose of some lands for them, and believed he gave Donelson instructions to sell them, or inquire the price: in short his answers in general were evasive, and not much to the purpose; and, at parting, he observed, that if he found any papers respecting my inquiries, he would give me any information he knew of them. And, further answering, says that he has no recollection of the circumstances mentioned in said memorandum, except that what he, the witness, said about the power of attorney to Armstrong, was not of his own knowledge, but only a pretence to draw some information from Armstrong as to the deeds, as the witness did not in fact know said power of attorney to be at Knoxville.

CHARLES F. MAYER, *Commissioner.*

ROBERT CASEY.

8th. State whether Watson did not frequently complain of Donalson having deceived him, by conveying him lands, as attorney in fact, when he had no power to do so?

To the eighth, he answers and says that, he recollects nothing of such observations.

9th. State whether Watson wrote many letters to Donaldson, urging him to procure the ratification of the contract by Armstrong; and whether you did not record said letters, and all others relating to his land purchases of Donaldson; and whether said letter book are not in your possession? If so, give and set out copies of all and every letter recorded upon that subject, whether relating to the said purchase or other lands.

To the ninth, he answers and says that, he does not recollect the substance of any of said Watson's letters, or to whom or from whom, whilst in said Watson's employ, or whether he recorded any such letters in a letter book, or otherwise, and has not such letter books in his possession, nor does he know any thing of them.

10th. State the consideration paid, if any, for those lands described in said deed of 6th February, 1796; and how secured, and how, and when paid.

To the tenth, he answers and says that he knows nothing of any consideration paid for any lands conveyed to or from Josiah Watson, nor does he know of any deed of the description, bearing date 6th February, 1796.

11th. State whether you have any memorandums in your possession relating to the land dealings between Donalson and Watson; and, if so, set forth copies in this deposition.

To the eleventh, he answers and says that he has no memorandums which he knows to relate to those land dealings, except that, among his old papers, he has found two lists, copies whereof he here exhibits, and refers to as part of his answer, marked, respectively, A and B. That said paper, of which exhibit A is a copy, is in the handwriting of him, the witness; that the paper, of which exhibit B is a copy, is in the handwriting of the witness, only

as to the words at the back of it: "Received the above deed to be recorded in the State of Tennessee. Ro. Casey."

That the endorsation, first by Casey to Raleigh, for re-acknowledgment on exhibit B, is in the handwriting of the witness That he had the paper, of which exhibit A is a copy, with him on his journey to Tennessee, mentioned by him in his answer to the 7th interrogatory, as he believes.

12th. State all the conversations you heard Watson and Donalson in relative to this conveyance, the power of attorney, by which he pretended to convey; whether it was present; whether Donalson promised to prove it and send it; and, also, all the conversation of Watson, complaining of a want of power in Donalson to have made the sale.

To the twelfth, he answers and says, that, having no interest in those transactions between Watson and Donalson, more than the discharge of his duty whilst in Watson's employ, he has no recollection of any such conversation.

13th. State whether Watson was in insolvent circumstances, or otherwise, in 1796, and all you know upon the subject.

To the thirteenth, he answers and says that he was not in Mr. Watson's employ in 1796; and, therefore, cannot be presumed to know any thing of his circumstances.

CHARLES F. MAYER, *Com'r.*

Robert Casey.

Cross-interrogatories to be propounded, on behalf of respondent, McIver, to Robert Casey, of Baltimore, (in the suit of Alexander McCall vs. Josiah Watson and John McIver,) at the time of taking of his, the said Casey's, deposition by complainant.

1st. Did you not, whilst engaged in the employment of Josiah Watson, undertake a journey for him to North Carolina in the month of August or September, 1797; and was it not the principal object of said journey to procure Donalson's acknowledgment of sundry deeds which had been previously made by him to said Watson for lands in Tennessee, in order that said deeds might be proven by you in Tennessee, and there registered in the proper office?

To the first interrogatory of the interrogatories hereunto annexed, on the part of the respondent, McIver, the said Ro. Casey answers and says that he went to North Carolina on business of said Josiah Watson, but, at what exact time, does not now recollect, but thinks he returned about October, 1797, and also thinks that part of his business was to procure re-acknowledgments of certain deeds from sundry persons, but whether from S. Donalson, or not, he does not recollect.

2d. Were not all the contracts which were entered into between said Donalson and Watson, for lands in Tennessee, made and executed previous to the month of March, 1797, and before you was engaged in the employment of said Watson?

To the second, he answers, and says that he does not know.

3d. Had you any knowledge of the consideration paid by Watson to Donalson for said lands, except what you derived from Watson himself, and from an examination of his books and papers?

To the third, he answers, and says that he does not recollect.

4th. Did you not understand from Watson, before you undertook the journey to North Carolina before mentioned, that he had fully paid and satisfied Donalson for all the lands which had been conveyed to him by Do-

nalson before that time, whether in his own name, or as attorney in fact for others?

To the fourth, he answers, and says that he can state no reason, as he has no recollection of the transaction.

5th. Did not Donalson, soon after your arrival in North Carolina, acknowledge all the deeds to Watson, for lands in Tennessee, which you then presented to him, and which had been previously executed by Donalson either at Alexandria or elsewhere before a competent number of witnesses? Did he not then re-acknowledge, before you, a deed which he had previously made to Watson, as attorney in fact for M. Armstrong, for 35,170 acres of land in Tennessee?

To the fifth, he answers, and says that he does not know, and that he has no knowledge of the land mentioned in this interrogatory.

6th Did you not then understand from Donalson as well as Watson, that said Donalson was duly authorized to sell and *and* convey said 35,170 acres to Watson, as the attorney in fact for M. Armstrong; and did not Donalson then state to you that the power to him from Armstrong, under which he conveyed to Watson, was then in Tennessee, and registered in the proper office there?

To the sixth, he answers, and says that he has no recollection of that matter.

7th. Did you then, or at any time while acting as the agent of said Watson, hear, or understand, that said power from Armstrong to Donalson had been recalled, or in any manner revoked?

To the seventh, he answers, and says that he does not recollect.

8th. Did you not, in the year 1798, undertake a journey to Tennessee for the purpose of attending to the land business of said Watson? Did you not then cause said deed, as made by Donalson, as attorney in fact of M. Armstrong to Watson, for 35,170 acres of land, to be registered in Davidson county, in said State of Tennessee? Did not Armstrong then live in Davidson county; and did you not then inform him that you had said deed committed to record in said county?

To the eighth, he answers, and says that he set out for Tennessee about the 6th of March, 1798, on land business of said Watson, but not for that alone. That he has no recollection of a deed for the 35,170 acres of land, alluded to. That Armstrong then lived, he believes, or had a temporary residence, in Nashville, in Tennessee; but does not recollect having informed him of having committed said deed to record in Davidson county.

9th Had not Watson further claims on Donalson for lands, besides those which had been conveyed by said Donalson to Watson previous to your journey to North Carolina in 1797? Did not Donalson then, in part satisfaction of said claims, deliver to you, for the use of said Watson, a patent and deed for 19,000 acres of land in Cumberland valley? Did you not take in with you to Alexandria said patent and deed; and did not said Watson refuse to receive the same? And were not said patent and deed afterwards returned back to Donalson, as you have reason to believe?

To the ninth, he answers, and says that he has no recollection of Watson and Donalson's land, or other transactions, or of the deed for 19,000 acres alluded to in said interrogatory, or of the circumstances there alluded to.

10th. Was not Watson considered wealthy in the year 1797? Was he not possessed of a very extensive landed estate in the States of Virginia, Kentuc-

ky, and Tennessee? Was he not a director in the Bank of Alexandria, and in high credit, as a merchant, until the month of October, 1797?

To the tenth, he answers, and says that he conceived Watson wealthy, or at least in good credit, in 1797; but does not know what quantity of land he possessed in either or any of the States, or whether he was director in any bank.

CHARLES F. MAYER, *Com'r.*

ROBERT CASEY.

(Exhibit A.)

LIST of sundry Deeds belonging to Josiah Watson, brought, by R. Casey, to Tennessee to be recorded.

	From whom.	By their Attorney.	To whom.	Date of Deed	What county.	Subscribing witnesses' names.
1	Stockley Donelson.	John Summerville.	Josiah Watson.	4 June, 1796.	Davidson.	Jno Taylor, W. J. Washington, Wm. Washington, Jno. Watson.
2	Do	Do	Do	Do	Do	Do do do do
3	Do	Do	Do	Do	Do	Do do do do
4	Do	Do	Do	6 July, 1796.	Do	Jno. Summerville, R. Wynne
5	Do	Do	Do	21 March, 1797.	Davidson and Sumner.	Jno. Taylor, jr., R. Watson, J. Watson, B. Neale, and R. C.
6	Do	Regis'd and paid for.	Do	19 October, 1796.	Sumner.	Jas. Watson, Isaac Thompson, jr, Jno. Watson, jr.
7	Do	Do	Do	19 Sept., 1796.	Davidson and Sumner.	Do do do do
8	Do	Do	Do	6 July, 1796.	Davidson.	John Summerville and Richard Wynne.
9	Do	Do	Do	Do do	Do	Do do do do
10	Do	Regis'd and paid for.	Do	31 August, 1796.	Do Tenn. J. K.	Wm. Terrell, Severn Donelson, Jas. Easton, Jas. Watson, Washington J. Washington, Sam'l Love, jr., Jno. Taylor, jr.
11	Do and Wm. Terrell	Do	Do	25 " "	Davidson, Tenn. and Sumner	John Love, Jas. Watson, W. J. Washington, Geo. Flacum, Isaac Thompson, jr.
12	Do	Do	Do	31 " "	Middle district, Davidson.	Jno Easton, Severn Donelson, Jo. Watson, S Love, jr., J. Taylor, jr., W. J. Washington.
13	M. Armstrong.	Stockley Donelson	Do	31 " "	Davidson.	C J. Love, Jno. Taylor, jr., Robert Casey.
14	Do	Do	Do	26 Feb, 1797.	Davidson (M. D.) W. D.	Jno. Taylor, jr., R. Watson, Jas. Watson, B. Neale, and R. Casey.
15	Ro. Burton.	Do	Do	20 " 1796.	Powell's valley and C. river.	Jno. Taylor, jr., Isaac Thompson, jr., Ro. Watson.

(Exhibit A.)—Continued.

	From whom.	By their Attorney.	To whom.	Date of Deed.	What county.	Subscribing witnesses' names.
16	Wm. Terrell.	Stockly Donelson.	S. Donelson.	30 Aug., 1796.	Tennessee.	Jas. Easton, Severn Donelson Jno. Taylor, jr., S Love, jr., Jas Watson, and Robert Casey.
17	Jas. Glescon.	Do	Do	3 March, "	Davidson.	John Summerville, William Hill.
18	Jas. Easton.	Do	Do	30 Aug., 1796.	Sum. Tenn.	Wm. Terrell, S. Donelson, James Watson, W. J. Washington, Jno Taylor, jr. Sam'l Love, jr., and Ro Casey.
19	Sher'd Barron.	Regis'd and paid for.	Do	4 July, 1796.	Sumner.	Jas Glescon, Nancy Williams, Ro Casey
20	Jno. Sheppard.	Do	Do	20 June, "	Knox.	O. Smith, R Hodges, Ro. Casey.
21	Will. Williams.	Do	S. Donelson and W. Terrell.	30 March, 1796.	M. D. and Davidson.	Wm. Hill, Jas. Cholin, and Ro. Casey.
22	Wyley Jones and Allen Jones.	Regis'd and paid for.	Ro. Burton.	17 Dec., 1795	Powell's valley, and Clinch.	P Henderson, Steph Sneed, Jas. Vaughn as to Jones, Hutchens Burton, E. Haynes.

CHARLES F. MAYER, *Commissioner.*
R. CASEY.

The above writing, exhibit A, part of Ro. Casey's answer to the complainant's 11th interrogatory.

CHARLES F. MAYER, *Commissioner.*

Exhibit B, referred to in the witness's answer to the complainant's *eleventh* interrogatory.

A list of deeds in the possession of Ro. Casey, to be acknowledged as by memo., belonging to Josiah Watson:

Deed from Willie Jones to Ro Burton, dated 17th December, 1795.
Do. from Ro. Burton to Josiah Watson, dated 20th December, 1796.
Do. from James Glescon to Stockley Donelson, 3d March, 1796.
Do. from John Sheppard to S. Donelson, dated 20th June, 1796.
Do. from James Easton to S. Donelson, dated 30th August, 1796.
Do. from William Terrell to ditto " 30th " 1796.
Do. from Sherrod Brown to ditto " 4th July, 1796.
Do. from Donelson and Tyrell to Josiah Watson, dated 25th Aug., 1796.
Do. from Stockly Donelson to Josiah Watson, dated 6th July, 1796.
Do. " do. do. " do. do. 4th June, 1796.
Do. " do. do. " do. do. 4th " 1796.
Do. " do. do. " do. do. 4th " 1796.
Do. " do. do. " do. do. 6th July, 1796.
Do. " do. do. " do. do. 6th " 1796.
Do. " do. do. " do. do. 12th Oct. 1796.
Do. " do. do. " do. do. 19th Sept. 1796.
Do. " do. do. " do. do. 21st Mar. 1797.
Do. " do. do. " do. do. 31st Aug. 1796.
Do. " Donelson and Terrell " do. do. 1st Aug. 1796.
Do. " Willo'by Williams to Stockly Donelson, dated 30th Mar. 1796.
Do. " Martin Armstrong to Josiah Watson, dated February, 1797.
Do. " do. do. " do. do.* by Stockly Donelson, } 31st Aug. 1797.

Received the above deeds to be recorded in the State of Tennessee, being the property of Josiah Watson, as witness my hand this 6th March, 1798.

CHARLES F. MAYER, *Commissioner.*

On said paper, of which this exhibit is a copy, is the following endorsation list of military lands sent by *Casey to Raleigh*, for re-acknowledgment.

(A word here not legible.)

ROBERT CASEY.

CHARLES F. MAYER, *Commissioner.*

Deposition of Mark Harden—No. 2.

Deposition of M. Harden.

Deposeth and saith, that he was a subscribing witness to two certain instruments of writing on the same piece of paper given by Stockly Donelson to General Martin Armstrong, dated the 17th day of March, 1796, purporting to be a revocation of certain powers of attorneys therein mentioned, and which said paper is herein enclosed; that he feels certain in his mind that he saw the said Stockly Donelson sign the said instruments of writing, and further saith not.

M. HARDEN.

Sworn and subscribed before me, the 25th day of October, 1822.

JOHN ODENEAL, *J. P.*

*This signature stands crossed, as here represented, in the original paper.

Interrogatories for Doctor Alexander McCall.

The deposition of Alexander McCall—No. 3.

Deposition of Doctor Alexander McCall.

Question 1st. Was there an answer filed by Josiah Watson to a bill and amended bill filed in the federal court at Nashville, by Alexander McCall against said Watson and John McIver, some time in the year 1820, and which answer was withdrawn from the files in said office?

Answer to 1st question. I saw the answer of Josiah Watson in the hands of A. Balch, McCall vs McIver and Watson, and wanted to take a copy; Mr. Balch answered no; he had to return it to the office. Mr. Balch was then the counsel for the complainant.

Question 2. Have you examined said answer, and also the answer subsequently filed by Watson? and were they not substantially different? and, if you recollect, in what respect they differed?

Answer to 2d question. I have, and found them essentially different, especially in this, that, in the first answer, Mr. Watson spoke of having had many transactions with Donelson, but did not aver, as in the last answer, that he had given consideration for these lands. Mr. Balch remarked that the answer was such as he expected.

Deposition of Doc. A. McCall.

ALEX. McCALL.

Sworn to in open court, September 23d, 1831.

NATHANIEL A. McNAIRY, *Cl'k.*

Interrogatories for Charles J. Love.

The deposition of Charles J. Love—No. 4.

Deposition of C. J. Love.

Question 1st. Had you conversation with John McIver in his life time, in relation to two answers filed by Watson in a suit in the federal court at Nashville, of Alexander McCall against himself and Josiah Watson? If so, state what he stated upon that subject, and state whether McIver then showed said first answer. If so, state in substance, and whether he showed you an entry in Watson's old books; if so, state its contents, and what he said in relation thereto. Was or was not he speaking of the lands conveyed by Donelson, as attorney in fact of Armstrong; and did he or not mention the labor and trouble in hunting up the power of attorney?

Did McIver say any thing of the difficulty of getting Watson to make any other answer? State all you know.

McIver stated that the creditors of Watson were making great difficulties about his compensation for services rendered in the business of Watson; that, if they knew as much as he did, they would not complain, and be willing to pay him for the trouble he had had in this business; that Watson had purchased from Donelson a considerable amount of lands, and that the consideration was contracts which he had previously made, which had not been complied with. He stated, witness thinks, that an entry to that import was made on the books of Josiah Watson; offered to show the books, or may have turned to them, but witness does not recollect whether he read the statement. McIver said he had considerable difficulty in hunting the power of attorney, and found it at last in the hands of Mr. Dillon. McIver said that the answer that was sent on would have

Deposition of C. J. Love.

been injurious to the cause. Nothing was said about the last answer, except that he had some difficulty in getting Watson to make a second answer. The above conversation was had in 1819 or 1820. Witness understood the lands referred to were situated in the Western district, and which had been conveyed by Donelson to Josiah Watson; that the same lands had been owned by Martin Armstrong, and that the conversation also referred to all lands which had been owned by Armstrong, and conveyed as above.

CH. J. LOVE.

Sworn to in open court, September 23d, 1831.

N. A. McNAIRY, *Clk.*

The following depositions were read in the suit at law in behalf of McIver and Watson, and this suit.

The deposition of William Hughtell—No. 5.

Deposeth and saith, that Martin Armstrong presented to him the power of attorney herewith enclosed, and, after acknowledging the same to be his act and deed, requested this deponent to witness it; and that the named William Hughtell thereto subscribed as a witness, is the handwriting of this deponent; and saith that he believes the name of Martin Armstrong, jr., subscribed to the said power as a witness, is the handwriting of said Martin Armstrong, jr., who is since dead, as this deponent fully believes, having lived in the same neighborhood at the time. That this deponent lived in Overton county, in the State of Tennessee, at the time he was called on to go to Cumberland county, in Kentucky, to prove a power of attorney from said Armstrong to Stockly Donelson, and pays taxes and resides in Overton county aforesaid, and never resided or paid taxes in the State of Kentucky, unless his residence, which is north of the northern boundary line of Sevier's two large tracts of land in Overton, should be a part of Kentucky.

Deposition of Wm. Hughtell.

Question by defendant McIver. Is not your residence near Burksville, in Cumberland county? and how far to Monroe, in Overton county?

Answer. The roads have never been measured as this deponent knows of; but thinks his residence is a mile or a mile and a half nearest to Burksville.

Deposition of Wm. Hughtell.

Question by defendant McIver. Did I not apply to you to go to Williamsburg, in Jackson county, to prove the power of attorney from Arm strong to Donelson?

Answer. This deponent was unwell at the time, and did not like to go to Williamsburg, and inquired whether proving the power of attorney in another State would not answer; and, believing that McIver intended to summon him to Knoxville to prove the power, he proposed going to Burksville for *that* purpose of the convenience.

Question by defendant McIver. Have you not been required by the county court of Cumberland county, to list your lands, and pay taxes in that county?

Answer. At my first settling in Overton, I was applied to by the commissioner of Cumberland county for that purpose, but refused. Afterwards a process was issued by that court to call me there for the same purpose, on which I went to the court of that county, and refused to acknowledge its jurisdiction, and it was dropt.

Question by defendant. Do not some of your neighbors, living south of your residence, pay taxes in Cumberland county?

Answer. Some persons who live south of Sevier's line pay taxes in Cumberland county.

WILLIAM HUGHTELL.

Sworn to before

JOHN ANDERSON, *J. P.*

The deposition of Thomas Jackson—No. 6.

Deposeth as follows, to wit, viz. Being in the town of Rogersville on a certain time when Mr. Joseph Park kept store, and at which time, I think, a certain Hugh Campbell was his partner, the year or month I cannot recollect; but I saw Martin Armstrong and Stockly Donelson in said store, and heard Martin Armstrong acknowledge the said Stockly Donelson as being authorized by him to sell land for him; and from the conversation which then passed, it appeared that Stockly Donelson had sold to said Park, some time before, a tract of land on Tennessee river, which, to the best of my knowledge, was granted to Stockly Donelson and Martin Armstrong, lying below Southwest point; and I saw Martin Armstrong receive some goods at that time, as they all said, towards the payment for said land: at this time the register's office was kept at my house, I mean for Hawkin's county, and I know there was such a tract registered there as was sold to Park. At another time Martin Armstrong was at my office, and, in conversation about lands registered there, he mentioned that he had authorized Colonel Donelson to sell for him the lands belonging to him or in partnership. In this, I might misunderstand him, but it was my conception that he had generally authorized him, I say this was my conception of what he then said.

Deposition of Thos. Jackson.

Objected on the trial.

Question by plaintiff. Did you ever see any revocation from under the hand of Martin Armstrong, either by public advertisement or by any written instrument, registered or recorded in Tennessee, disavowing the authority of Donelson to sell or convey lands for him?

Objected to on trial.

Answer by deponent. I never did; and further this deponent saith not.

THOMAS JACKSON.

MATTHEW CAMPBELL,
One of the acting Justices of the Peace in and for the County of Granger.

The deposition of John Adair—No. 7.

Deposeth as follows: That this deponent was well acquainted with Martin Armstrong and Stockly Donelson, from about the year 1786 until the years 1796 and 1797; that he done business for both of them, at periods, during that time. That, after the removal of this deponent to Knox county, which took place on or about the year the said Armstrong and Donelson were in the habit of coming frequently to the house of this deponent, and often staid together there for several days at a time, when on business in that neighborhood; that, from their frequent conversations together while at the house of this deponent, he always believed they were extensively connected together in landed business in this country, and the strictest intimacy and conndence ar

Deposition of John Adair.

peared to exist between them. And this deponent well recollects that the said Armstrong and Donelson made a constant practice of selling lands, each for the other, and both appeared to assent to and ratify such sales; that said Donelson was in the habit, during said period, of selling lands in this country for Armstrong; and, from his acquaintance with both of them, he always considered and believed that Armstrong fully consented thereto, and admitted the authority of Donelson thus to sell and convey for him; indeed, he never heard the authority of said Donelson, in this respect, doubted or called in question, during the forementioned periods, from 1786 to 1797; and the sales, so made by Donelson for Armstrong, in this part of the country, this deponent believes to have been very considerable. And further this deponent saith not.

JOHN ADAIR.

Sworn to, and subscribed to before me, this 16th day of May, 1816.

JAMES DARDES, [SEAL.]

A Justice of the Peace, Knox County.

The following deed is made profert of by McIver, in his first answer, and offers to produce it on the trial; and it was produced and read accordingly:

Deed of M. Armstrong to J. Watson.

This indenture, made this twenty-sixth day of February, in the year of our Lord one thousand seven hundred and ninety-seven, between Martin Armstrong, of the county of Stokes, and State of No. Carolina, of the one part, and Josiah Watson, of the county of Fairfax, and commonwealth of Virginia, of the other part, witnesseth: That the said Martin Armstrong, for, and in consideration of the sum of ten thousand dollars to him in hand paid, the receipt whereof is hereby acknowledged, hath, and by these presents, doth grant, bargain, sell, alien, enfeoff, and confirm, unto the said Josiah Watson, his heirs and assigns, for ever, the following tracts or parcels of land, viz. one tract, containing six hundred and forty acres, lying in the county of Davidson, on Sturgeon creek, on the north side of Sulphur fork of Red river, on the north side of Cumberland river, joining the north boundary of a tract of land surveyed for Wm. Caswell, esq. beginning at a black oak and dogwood, northwest corner to the aforesaid tract, and running east with his line, 320 poles, to a poplar; thence north, 320 poles, to a stake; thence west, 320 poles, to a stake; thence south, 320 poles, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of North Carolina, patent bearing date the 15th day of September, in the year of our Lord 1787. Also, one other tract of land, containing 640 acres, lying in Davidson county, on the south side of Richland, beginning at a forked poplar, on the north side of the creek, above a poplar and red oak, marked F, running west, 240 poles, to three sycamores; thence south, 427 poles, to a stake, 20 poles south of a walnut and gum, marked; thence east, 240 poles, to a stake; thence north, 427 poles, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of North Carolina, patent bearing date the 15th day of September, A. D. 1787. Also, one other tract of land, containing 5,000 acres of land, lying in the Middle district, on the north side of Elk river, on the head waters of Big creek, beginning at a beech on the north bank of the creek, and running thence north, 150 poles, to a poplar and ash; thence east, 1264 poles, crossing the creek, to a white oak; thence south, 632 poles, to a stake;

thence west, 1264 poles, to a stake, thence to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of North Carolina, patent bearing date the 10th day of July, A. D. 1788. Also, one other tract of land, containing 5,000 acres, lying in Middle district, on Richland creek, on the waters of Elk river, beginning at a beech and elm on a dry branch, the southeast corner of a survey of John Nelson's, No. 1110, running south, 160 chains, to a black walnut and ash; thence east, 312 chains, 50 links, to a poplar; thence north, 160 chains, to a stake; thence west, 142 chains. 50 links, to Thomas Polk's southeast corner, with said Polk's line, in all 312 chains, 50 links, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of North Carolina, patent bearing date the 10th day of July, A. D.. 1778. Also, one other tract of land, containing 3,000 acres, lying in Middle district, on the south side of Duck river, near the head of Sinking creek, beginning at a large sycamore and sugar tree on the west bank of the creek, being Martin Armstrong's beginning corner of a survey of 2,000 acres, No. 1117; running thence south, 800 poles, to a red oak; thence east, ×ing the creek, 600 poles, to a stake; thence north, 800 poles, to a stake; thence to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of North Carolina, patent bearing date the 10th day of July, A. D. 1788. Also, one other tract of land containing 250 acres, lying in Middle district, on the head waters of Weakley's creek, a west fork of Rickland creek of Elk river, beginning at a walnut and buckeye, near a large Indian campment, running west, 200 poles, to a red oak; thence south, 200 poles, to a mulberry and dogwood sappling; thence east, 200 poles, to a stake; thence north, 200 poles, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of No. Carolina, patent bearing date the 10th day of July, A. D. 1788. Also, one other tract of land, containing 640 acres, in Davidson county, on both sides of the east fork of Yellow creek, beginning at a poplar, white oak, and ash, corner to Jno. Nichol's and Peter Dumeuk, running west, 445 poles, to an ash and maple, said Nichol's northwest corner; thence north, 230 poles, to a red oak, ash, and dogwood; thence east, 445 poles, to a red oak and poplar; thence south, 230 poles, to the beginning: which said tract was granted as aforesaid, the 15th day of September, A. D. 1787. Also, one other tract of land, containing 5,000 acres, lying in the western district, on a south bank of a river running into the Mississippi, near the Iron Banks, adjoining said Armstrong, of No. 1315, and John G. and Thomas Blount, No. 2352, and Benjamin Smith, No. 1626, on said creek, beginning at two dogwoods, on said Smith's line, runs south, with said Smith's line, to Blount's corner, and with Blount's line, 160 chains, to a black oak and dogwood, Armstrong's corner; thence, with Armstrong's line, 312½ chains, to a dogwood, Armstrong's corner of said number; thence north, 160 chains, to a stake; thence east, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of No. Carolina, patent bearing date the 10th day of July, A. D. 1788. Also, one other tract of land, containing 2,000 acres, lying in the Western district, on the south side of the north forked Deer river, beginning at a sweet gum, persimon, and willow oak, marked R. & W. R., on Anthony Sharp's line; runs with his line east, 100 chains, to said Sharp's and Will. Hughtell's corner; with his line, in all 160 chains, to a white oak, ash, and sassafrass, said Hughtell's southeast corner; thence south, 312½ chains, to a stake;

thence west, 160 chains, to a stake, Benjamin Smith's corner; thence with his line, north, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of No. Carolina, patent bearing date the 10th day of July, A. D. 1788. Also, one other tract of land, containing 5,000 acres, lying in the Western district, on forked Deer river, including the fork of said river, beginning at a sweet gum and hornbeam, marked I R, Martin Armstrong, jr.'s northeast corner; running north, 250 chains, to an elm, ash, and sweet gum, marked I R; thence west, 200 chains, to a stake; thence south, 250 chains, to a stake, Martin Armstrong, jr.'s corner; thence with his line east, 200 chains, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of No. Carolina, patent bearing date the 10th day of July, A. D. 1788. Also, one other tract of land, containing 5,000 acres, lying in the Middle district, on Richland creek of Elk river, beginning at a black walnut and ash on the side of a ridge, John Armstrong's northeast corner; runs with said Armstrong's line, south 160 chains, to a beech and mulberry, said Armstrong's corner; thence east, 312½ to a stake; thence north, 160 chains, to a poplar, said Martin Armstrong's corner of a tract, No. 1106; thence with his line, west 312 chains, 50 links, to the beginning: which said tract of land was granted unto the said Martin Armstrong by the State of No. Carolina, patent bearing date the 10th day of July, A. D, 1788. Which several tracts of land, containing, in the whole, 35,170 acres, together with all and singular the woods, waters, water-courses, profits, commodities, hereditaments, and appurtenances, whatsoever, to the said tracts of land belonging or appertaining; and the reversion or reversions, remainder and remainders, rents and issues thereof, and all the estate, right, title, interest, property, claim, and demand, of the said Martin Armstrong, and his heirs, of, in, and to the same, and every part or parcel thereof, either in law or in equity. To have and to hold the said 35,170 acres of land, with the appurtenances, unto him, the said Josiah Watson, his heirs and assigns, to the only proper use and behoof of him, the said Josiah Watson, his heirs and assigns, for ever. And the said Martin Armstrong doth, for himself, his heirs, executors, and administrators, covenant, grant, and agree, to and with the said Josiah Watson, his heirs and assigns, that he, the said Martin Armstrong, is now, at the time of the sealing and delivering of these presents, seized, in his own right, of a good, sure, perfect, absolute, and indefeasible estate of inheritance, in fee simple, in the said several tracts of land, hereditaments, and all and singular the premises hereby granted, *with their and every of their* appurtenances, without any manner of condition, mortgage, and limitation of use or uses, or any other matter, cause, or thing, to alter, change, charge, or determine the same; and, also, that he, the said Martin Armstrong, and his heirs, without any time hereafter, at the request, and at the cost and charge, of him, the said Josiah Watson, his heirs and assigns, execute and acknowledge any further lawful act and deed for the more certain assuring and conveying the said several tracts of land, and each and every of their hereditaments, and all and singular the premises hereby granted, with their and every of their appurtenances, unto him, the said Josiah Watson, his heirs and assigns, to the only proper use and behoof him, the said Josiah Watson, his heirs and assigns, as by him, the said Josiah Watson, his heirs and assigns, his, their, or any of their counsel, learned in the law, shall or may be advised or required: And, lastly, that he, the said Martin Armstrong, and his heirs, the several tracts of land, hereditaments, and all and singular the

premises granted, with their, and every of their appurtenances, unto him, the said Josiah Watson, his heirs and assigns, against the claim and demand of him, the said Martin Armstrong, and his heirs, and all and every other person or persons whatsoever, shall and will warrant and for ever defend by these presents. In witness whereof, Stockly Donelson hath, by virtue of a letter of attorney from the said Martin Armstrong, bearing date the day of 1790, and duly recorded in the court of county, hereunto set the hand, and affixed the seal of the said Martin Armstrong, the day and year first within mentioned.

STOCKLY DONLESON, [SEAL.]
Attorney in fact for
MARTIN ARMSTRONG.

Sealed and delivered in presence of

JNO. TAYLOR, jr.
ROBT. WATSON,
JAMES WATSON,
BURNETT NEETH,
ROBERT C. CASEY.

STATE OF TENNESSEE, *Knox County.*

Probate. I do hereby certify, that the due execution of the above deed was duly proven before me, David Campbell, one of the judges of the superior court of law and equity for the said State, by the oath of Robert Casey, one of the subscribing witnesses thereto. Given under my hand, at Knoxville, this 28th day of March, 1798. Let it be registered.

DAVID CAMPBELL.

STATE OF TENNESSEE, *Knox County.* } *Register's Office.*

Registered. The within deed of conveyance and probate is duly registered in book D, pages 352, 353, 354, and 555. May 2d, 1798.

THOMAS MOLLOY, *Reg'r.*

STATE OF TENNESSEE, *Lincoln County.*

REGISTER'S OFFICE, *4th May*, 1812.

The within deed, probate, and certificates, are duly registered in said office, book B, pages 114, 115, 116, 117, 118, and 119.

BRICE M. GARNER, *Deputy,*
for Samuel Barnes, Register for Lincoln County.

STATE OF TENNESSEE, *Giles County.* } *Register's Office.*

I, Fountain Lister, register of said county, do hereby certify that the foregoing is a true copy from the records of this office, of a deed of conveyance from Martin Armstrong, by his attorney in fact, Stockly Donelson, to Josiah Watson, together with the certificates thereon, as registered in book A, beginning on page 276, and ending on 285. Registered the 9th June, 1812.

Probate.

Given under my hand, this 9th September, 1830.

FOUNTAIN LISTER, *Register.*

And the said cause was continued from term to term until this term, to wit, the first above mentioned.

This cause coming on to be finally heard before the honorable John McLean, Associate Justice of the Supreme Court of the United States, and holding the circuit court of the United States for the district of West Tennessee, upon this, the 4th day of October, 1831, upon the original and amended bills, demurrer, the answers to the original and amended bills, exhibits, and proofs; and it appearing to the satisfaction of the court that the proper parties are not before the court, it is therefore ordered, adjudged, and decreed, that the complainant's bill be dismissed for want of proper parties before the court. It is further ordered and adjudged that the complainant pay the costs of this cause, to wit, the heirs of Childress, to whose ancestor the land in controversy was conveyed, before the filing of this bill by John McIver, and who are admitted to be citizens of this State, of which the complainant is also a citizen.

Decree.

Decree. On application of the complainant, by his counsel, an appeal is granted him to the next Supreme Court of the United States, he having given bond and security as required by law.

The following is copy of the appeal bond:

Know all men by these presents, that I, Alexander McCall, jr., am held and firmly bound unto Josiah Watson, Daniel Graham, and Maria his wife, and John McIver, jr., heirs of John McIver, deceased, in the penal sum of one thousand dollars: to which payment, well and truly to be made and done, I bind myself, my heirs, executors, and administrators, jointly and severally, firmly, by these presents: sealed with my seal, and dated the fourth day of October, 1831. The condition of the above obligation is such, that, whereas, a certain suit in equity, prosecuted in the federal circuit court of the U. States, for the district of West by Alex'r McCall, sen., complainant, against Josiah Watson, Daniel Graham, and Maria, his wife, and John McIver, jr., heirs of John McIver, deceased, and a decree was rendered in favor of the defendants; from which said decree of the court the complainant has prayed, and obtained an appeal, in the nature of a writ of error, to the Supreme Court of the United States: Now, if the said Alexander McCall, sen., shall prosecute his said appeal with effect, and in case he fail therein, and pay all cost that may be awarded against him for such failure, then the above obligation to be void, else to remain in full force and virtue.

ALEX'R McCALL, [SEAL.]

Test: N. A. McNAIRY.

UNITED STATES OF AMERICA, *District of West Tennessee.*

I, N. A. McNairy, clerk of the circuit court of the United States for the district aforesaid, do certify that the foregoing is a true and complete transcript of the original, amended, and supplemental bill, answers, replications, exhibits, depositions, and testimony, title papers, &c., that were read on the trial of the cause at law and equity; and, also, the several orders that were made in the cause.

In testimony whereof, I have hereunto subscribed my name, and affixed the seal of said court, at office, this 21st December, in [L. S.] the year of our Lord, 1831, and of the independence of the United States the 56th.

N. A. McNAIRY.

[Clerk's fee for transcript, 359 copy sheets at 33⅓ $119 66.]